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FOREIGN INVESTMENT IN THE U.S.

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 289

TO PROVIDE FOR THE REGISTRATION OF FOREIGN INTERESTS IN UNITED STATES PROPERTY, AND FOR OTHER PURPOSES

S. 856

TO AMEND TITLE 13 OF THE UNITES STATES CODE AND THE INTERNATIONAL INVESTMENT AND TRADE IN SERVICES SURVEY ACT TO IMPROVE THE QUALITY OF DATA ON FOREIGN INVESTMENT IN THE UNITED STATES

JULY 11, 1989

Printed for the use of the
Committee on Commerce, Science, and Transportation

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FEDERAL GOVERNMENT'S COLLECTION OF DATA ON FOREIGN INVESTMENT IN THE UNITED STATES

TUESDAY, JULY 11, 1989

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met at 9:35 a.m., in room SR-253, Russell Senate Office Building, Hon. Ernest Hollings (Chairman of the Committee) presiding.

Staff members assigned to this hearing: Loretta Dunn, staff counsel; Sally Susman, professional staff member; and Fiona Branton, minority staff counsel.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. Good morning. The committee will please come to order.

We welcome you all here to today's hearing on the federal collection of information on foreign investment in the United States.

We will hear from our colleague, Senator Harkin, and also our colleague, Senator Murkowski, led by John Bryant. Is he here?

The reason I ask is because Congressman Bryant is chief counsel on the Hastings trial, and they have hearings scheduled this morning and if he comes, I might interrupt so that he can be heard expeditiously and get back to his other work.

Otherwise it is a very interesting and intriguing subject—in that we are trying to find out the worthiness of requiring even further information by our foreign investors in the United States.

As we all know, we have a dichotomy here. We have got everybody in the national congress worried about the government and the country being bought up, and everybody at the state level with an office in Tokyo and Brussels trying to get them to buy it up.

On the national end of it, what really occurred was a result of not paying our bills and running these high deficits financed by foreign investment. Our distinguished President borrowed $100 million more from Japan yesterday to give to Poland. We do not have it.

Three years ago the Secretary of the Treasury devalued the dollar almost by half.

And so, everyone has come running, to buy everything that has been built up of value in the last 213 years at half price, and it is working.

It is working in my state. It is working in everybody else's state.

And as a result, we asked the national governors' association, Governor Robb and Governor Exon, to send us a governor. The governor of Hawaii was tempted.

And I think that brings us into focus. None others would—well, most of them were in Tokyo or in Brussels. But the governor of Hawaii was tempted because of the extent of foreign investment in his state.

And whether we have reached that point, or whether we should be receiving the information to know when or if we could reach that point, is a matter of concern to the Congress itself.

At the same time, of course, the amendment that was proposed by Senator Harkin and by Congressman Bryant on the omnibus trade bill was rejected in conference because of the opposition of the administration and the idea that it would chill foreign investment, and furthermore that we had all of that information anyway, and we did not want to destroy the proprietary nature of it. We wanted to retain its confidentiality.

This morning the Senate Commerce Committee is having a hearing on the federal government's collection of information on foreign direct investment (FDI) in the United States. While this subject may seem obscure, it is important that we take the time to work through the labyrinth of information that exists on FDI. In doing so, I hope this hearing will avoid the pitfalls of extremism and address the truly important policy questions raised by the influx of FDI.

During this hearing, I hope to ascertain how current reporting requirements on FDI meet the needs of public decision-makers. Simply, do we know enough about the extent of FDI and its trends and impact on our country? This hearing will also consider two legislative measures dealing with this issue that are now before the Committee: S. 289, introduced by Senator Harkin, and S. 856, introduced by Senator Murkowski.

We have an excellent set of witnesses to help us wade through these issues. Senators Harkin and Murkowski will testify on their respective legislation. Congressman Bryant, who has introduced a companion bill to S. 289, will also address the Committee.

Dr. Michael Darby, Undersecretary for Economic Affairs, will present the Administration's position on the bills pending before the Committee. We welcome Dr. Darby to the Committee for the first time since his confirmation.

T. Boone Pickens, the Chairman of Boone Company, has recently returned from a shareholders meeting of the Koito Manufacturing Company, in Japan. We look forward to hearing about Mr. Pickens' experience investing in Japan. Although Mr. Pickens has been an outspoken advocate of free trade, his recent difficulties in entering the Japanese market have raised issues regarding what constitutes a level playing field in the international investment markets.

Elliot Richardson, Chairman of the Association of Foreign Investors in America (AFIA), will testify. AFIA was founded in 1988 to represent foreign investors and U.S. multinational corporations supportive of an open investment policy.

Dr. Douglas Woodward is an Assistant Professor of economics at the University of South Carolina and co-author of a recently published book on foreign investment entitled *The New Competitors.*

Dr. Woodward will discuss the record of foreign direct investors in this country.

These witnesses can illuminate some of the critical points in a clear and rational way.

I would like to point out that the Commerce Committee has a history of acting responsibly on the matter of foreign investment. In 1976, under the leadership of Senator Inouye, this Committee passed, and Congress approved, the International Investment Survey Act, which established the first comprehensive program to collect, analyze and publish information on foreign investment in the United States. The survey was reauthorized in 1981 and the Secretary of Commerce was directed to do benchmark surveys on foreign direct investment every five years thereafter.

More recently, the Senate enacted, as part of the Omnibus Trade bill, a provision known as the Exon-Florio amendment. This provision gives the President the authority to stop foreign takeovers of U.S. businesses which threaten national security. Senator Exon, in consultation with Senator Danforth, myself and others, worked very hard with the House and the Administration to craft a compromise which is an excellent addition to our laws affecting foreign investment.

I hope it is in this tradition that we proceed today. We must carefully assess our needs and the pros and cons of the legislation before us. I look forward to hearing from all the witnesses and my colleagues in the Senate first.

And, as a result, we now have the new bill by Senator Harkin, and I would yield to Senator Packwood.

OPENING STATEMENT BY SENATOR PACKWOOD

Senator PACKWOOD. Mr. Chairman, I might ask Senator Harkin when he talks, the one question I have been curious about, I have seen statements off and on that what these bills do is require less than is required in Europe for different European countries, but if the witnesses could distinguish between right to invest and investment restrictions and what is disclosed if you invest, it would be helpful to me.

I am curious whether we are running with the tide or counter to it if we pass this legislation. Thank you.

The CHAIRMAN. Very good.

Senator Exon.

OPENING STATEMENT BY SENATOR EXON

Senator EXON. Just a brief opening statement, Mr. Chairman.

I thank our colleague from the House who just came in, Congressman Bryant, and Senator Harkin and Senator Murkowski for addressing this problem. I think there is a problem, but I think the Chairman's opening remarks have kind of put all this in perspective.

I am not, while I have been generally sympathetic to what these bills are trying to do in one way or another and when the Chairman mentioned the administration's proposal with regard to have a "chilling effect" on foreign investment, we thought the same proposition a couple of years ago when, as a part of the omnibus

trade bill we passed the so-called Exon-Florio amendment which had to do with giving the President of the United States the right to investigate and to stop foreign takeovers if they adversely affected national security.

As Congressman Bryant knows, we worked very hard and very closely together on that, and I told him that when his bill or something like it came along, I wanted to a take a closer look at it.

I do think there is a problem, but we have all of these crosscurrents going on right now that are causing major concerns.

As I understand it, Mr. Chairman, there are about 16 agencies or departments of the federal government that are now in the business of looking at and processing foreign investments, and I would suggest that maybe one thing that we at least ought to consider possibly before we move too swiftly on some of these things with the opposition of the administration is to ask for a GAO study of all of these collecting points that we now have, how they are assembling their information, and how is it that what they come up with seems to come to different summations when it all is finally put together.

I guess what I am saying, Mr. Chairman, is I am not sure that we know as of now just how deep this problem is, but I suspect it is very serious.

The first thing I think we ought to do is find out where we are going or where we are not going with regard to collecting information supposedly that is presently available to us.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Robb.

Senator ROBB. Mr. Chairman, I have no opening statement. I appreciate the Chairman's clarification on where that $100 million came from in the appropriations process and how that is going to work on our deficit reduction program, but I am looking forward to the testimony from our witnesses.

The CHAIRMAN. Thank you.

Senator Stevens.

OPENING STATEMENT BY SENATOR STEVENS

Senator STEVENS. Mr. Chairman, I am just back from another long trip, and I was reading the recent edition of "Forbes Magazine." I think you all ought to read that in terms of some of the impact of foreign investment and what it really means as far as the valuation of what is coming into our country and the way that foreign investors are bringing assets valued under their system into our system, and the two are not compatible.

It seems to me that this disclosure concept is a good one, and I intend to support it.

The CHAIRMAN. Very good.

Senator Ford.

Senator FORD. I have no statement. I am looking forward to the witnesses.

The CHAIRMAN. Very good.

Senator Gore, did you have a comment?

Senator GORE. No, Mr. Chairman, just to congratulate you on the hearing.

The CHAIRMAN. Thank you.

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. Thank you, Mr. Chairman. I am pleased that you have called this hearing on the legislative proposals dealing with increased data collection of foreign direct investment by the Federal Government.

The investment of foreign nationals in this country has been a matter of much concern on the part of many of our constituents, and some of our colleagues. However, though I recognize this concern, we must also recognize the importance of this investment which each one of our states is actively seeking to enhance the economies of our States and the Nation.

This matter has been the subject of discussion before this committee in the past, and we have several distinguished witnesses before us today to discuss the pros and cons of increased data collection. S. 856 introduced by Senator Murkowski permits greater intergovernmental sharing of the data we are now collecting. I see merit to this approach. However, I share the concerns of several of today's witnesses regarding the provisions of S. 289 introduced by Senator Harkin and others. I am particularly concerned by its provisions subjecting foreign investment to a higher disclosure requirement than exists for domestic parties.

Thank you for holding this hearing and I look forward to the testimony of our witnesses.

The CHAIRMAN. Thank you Senator Kasten.

[The bills follow:]

101ST CONGRESS
1ST SESSION

S. 289

To provide for the registration of foreign interests in United States property, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 31 (legislative day, JANUARY 3), 1989

Mr. HARKIN (for himself, Mr. LEVIN, Mr. METZENBAUM, Mr. SIMON, Mr. BURDICK, Mr. SHELBY, and Mr. CONRAD) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To provide for the registration of foreign interests in United States property, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be referred to as the "Foreign Ownership Disclosure Act of 1989".

SEC. 2. REGISTRATION OF FOREIGN-HELD INTERESTS IN UNITED STATES PROPERTY.

(a) INTERESTS ACQUIRED AFTER EFFECTIVE DATE.—Any foreign person who, after the effective date of

the regulations prescribed pursuant to subsection (j), acquires directly or indirectly—

(1) a significant interest in a United States property, or

(2) a controlling interest in a United States business enterprise;

shall register that interest with the Secretary within 30 days after the acquisition.

(b) INTERESTS ACQUIRED BEFORE EFFECTIVE DATE.—Any foreign person who, on the effective date of the regulations prescribed pursuant to subsection (j), holds directly or indirectly—

(1) a significant interest in a United States property, or

(2) a controlling interest in a United States business enterprise,

shall register that interest with the Secretary within 180 days after the effective date of such regulations.

(c) CONTENTS OF REGISTRATION.—Each registration required under subsection (a) or (b) shall be in such form and in accordance with such procedures as the Secretary may require by regulation and shall contain the following:

(1) The identity, address, legal nature, industry, and nationality of the foreign person.

(2) The date on which the foreign person acquired the interest.

(3) The relation of the foreign person to the United States property.

(4) The name, location, and industry of the United States property.

(5) The market value of (A) the assets of a United States business enterprise or (B) a United States real property.

(6) The percentage size of the interest acquired.

(d) ADDITIONAL DISCLOSURE FOR CONTROLLING INTERESTS.—If the interest registered under subsection (a) or (b) is a controlling interest in a United States business enterprise, the foreign person shall, by an amendment to the registration made within 180 days after registering such interest, provide the Secretary with the following additional current information:

(1) With respect to the foreign person, an English translation of so much of the information listed in subparagraphs (A), (B), and (C) of paragraph (2) that is publicly disclosed in the home country of the foreign person.

(2) With respect to the United States business enterprise—

(A) a—

(i) balance sheet and income statement;

(ii) statement of changes in financial condition; and

(iii) statement of sales, assets, operating income, and depreciation by industrial segment,

prepared in accordance with Generally Accepted Accounting Procedures or in accordance with Statutory or Regulatory Accounting Principles and accompanied by explanatory notes and any current auditor's statements and reports;

(B) the location of all facilities within the United States; and

(C) the identity and nationality of each director and executive officer.

(e) ANNUAL REPORTS.—(1) Within 90 days after the end of each calendar year, a foreign person who has registered an interest in United States property under this section, and who, at any time during such calendar year, held directly or indirectly—

(A) a significant interest in such property, shall report to the Secretary any changes in the information required under subsection (c) that have occurred since the filing of the registration under subsection (a) or (b) or the most recent report under this subparagraph; or

(B) a controlling interest in such United States business enterprise, shall report to the Secretary any changes in the information required under subsections (c) and (d) that have occurred since the filing of the registration under subsection (a) or (b) or the most recent report under this subparagraph.

(2) Any report filed under this section shall be in such form and in accordance with such procedures as the Secretary may require by regulation.

(f) SUBSTITUTION OF OTHER DOCUMENTS.—(1) To the extent a foreign person has prepared other documents which contain information required under this section with respect to an interest required to be registered or reported under this section, the foreign person may provide a copy of such other documents (or the relevant portions thereof) for the purposes of complying with the requirements of this section.

(2) With respect to any interest required to be registered or reported under this section which a foreign person acquires or holds solely through, or by virtue of acquiring or holding a significant or controlling interest in, a United States business enterprise which is an issuer whose securities are registered under the Securities Exchange Act of 1934 and which has filed the material required to be filed by such United States business enterprise pursuant to sections 12, 13, 14, and 15(d)

of such Act, the foreign person may, in lieu of providing the information otherwise required under this section, provide the Secretary with a copy of the most recent annual and periodic reports, statements, and notices filed pursuant to such Act.

(g) CIVIL PENALTY.—Any foreign person who is late in registering an interest or reporting changes with respect to an interest in accordance with subsections (a) through (f) shall be subject to a civil penalty of not more than $10,000.

(h) CRIMINAL PENALTIES.—(1) Any foreign person who willfully fails to register an interest or submit a report in accordance with subsections (a) through (f), or who willfully submits false or misleading information in the registration or report, shall be fined not more than $10,000, or shall be imprisoned not more than 1 year, or both.

(2) Any foreign person previously convicted of a violation under paragraph (1) who subsequently is convicted of a pattern or practice of violations under paragraph (1) shall be subject to forfeiture of all interests in United States property with respect to which such violations were committed.

(i) INVESTIGATIVE ACTIONS.—The Secretary may undertake such investigative actions as the Secretary considers necessary to monitor compliance with this section. For the purposes of conducting such investigations the Secretary shall have the same powers and authorities as the Federal

Trade Commission under sections 9 and 10 of the Federal Trade Commission Act.

(j) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary shall publish for notice and public comment regulations to carry out this section. The final regulations prescribed to carry out this section shall take effect not later than 180 days after such date of enactment. Such regulations shall—

(1) establish forms and procedures for making the disclosures required by this section; and

(2) establish procedures for indexing, and providing access to, the information disclosed under this section.

(k) REPORTS TO CONGRESS AND THE PRESIDENT.—The Secretary shall transmit in June of each year, beginning in 1989, a report to the President and the Congress describing—

(1) the extent to which foreign persons hold significant or controlling interests in United States properties, the nationality of those foreign persons, the industries in which those interests are concentrated, and the social, economic, and other effects in the United States of such foreign interests;

(2) the effectiveness and efficiency of the registration and reporting requirements contained in this sec-

tion in providing the information required under this section and the extent to which the information provides a comprehensive description of the presence of foreign capital in the United States economy;

(3) other Federal data collection activities that overlap with, duplicate, or complement the registration and reporting requirements established under this section and that could be consolidated or eliminated without compromising the quality of data collected; and

(4) in the case of the first annual report, the feasibility of establishing a system to track individual transactions representing other capital flows into the United States.

(l) REGISTRY OF FOREIGN-HELD INTERESTS.—(1) Not later than 365 days after the effective date of the regulations prescribed pursuant to subsection (j), the Secretary shall compile (and thereafter keep current) a registry of interests registered or reported under this section and the information contained in such registrations or reports. The registry shall index the information for retrieval by—

(A) the name and nationality of any foreign person who registers or reports an interest under subsections (a) through (f) and the standard industrial classification number or numbers (as issued by the Director

of the Office of Management and Budget) of any such foreign person; and

(B) the name of the United States property in which any interest registered or reported under this section is held, the standard industrial classification number or numbers of any such United States property, and the State in which any such United States property is located.

(2) Access to the information in the registry shall be available only in accordance with paragraph (3) and only to—

(A) officials or employees designated to perform functions under this Act, including consultants and persons working on contracts awarded pursuant to this Act, under procedures established by the Secretary of Commerce;

(B) committees or subcommittees of the Congress, under procedures established by the committee or subcommittee;

(C) duly authorized officials and employees of the General Accounting Office, under procedures established by the Comptroller General;

(D) a single agency of each State, as designated by State law, under procedures established by that State in conformance with the procedures established

by the Comptroller General under subparagraph (C); and

(E) persons performing qualified research, under procedures established by the Secretary of Commerce by rule or regulation.

(3) The procedures established under paragraph (2) for access to the information in the registry shall be sufficient to prevent disclosure to any unauthorized person of any such information which specifically identifies any interest registered or reported under this section, any foreign person holding such an interest, or any United States property in which such an interest is held, except that duly authorized officials and employees of the General Accounting Office may disclose such information to a committee or subcommittee of the Congress.

(m) DEFINITIONS.—As used in this section:

(1) The term "Secretary" means the Secretary of Commerce.

(2) The term "United States", when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(3) The term "United States business enterprise" means—

(A) any sole proprietorship, branch, partnership, associated group, association, estate, trust, corporation, or other organization organized under the laws of the United States or of a State or that has its principal place of business in the United States; and

(B) any two or more enterprises described in subparagraph (A) which are acting in concert.

(4) The term "United States property" means—

(A) any United States business enterprise; and

(B) any real property located in the United States, including any minerals therein. For purposes of paragraph (6), contiguous properties in which a foreign person holds an interest shall be considered both separately and in the aggregate as one property.

(5) The term "foreign person" means—

(A) any individual who is not a citizen of the United States;

(B) any business enterprise that is organized under the laws of a foreign government or which

has its principal place of business outside of the United States;

(C) any foreign government or any agency or instrumentality of a foreign government; and

(D) any two or more persons acting as a group for the purpose of acquiring or holding any interest referred to in subsection (a) or (b) (and each foreign person in such group), if any foreign person or persons described in subparagraph (A), (B), or (C) of this paragraph hold an equity or ownership interest in such group of 25 percent or more, or the equivalent of such an interest.

(6) The term "significant interest" means any equity or ownership interest that exceeds 5 percent of the total equity or ownership interests in a United States property that (i) has assets or, in the case of real property, is an asset, in the United States with a market value in excess of $5,000,000, or (ii) had gross sales from the United States in the most recent fiscal year in excess of $10,000,000.

(7) The term "controlling interest" means an equity or ownership interest that exceeds 25 percent of the total equity or ownership interests in a business enterprise that—

(A) has assets in the United States with a market value in excess of $20,000,000; or

(B) had gross sales from the United States in the most recent fiscal year in excess of $20,000,000.

(8) The terms "acquire" and "hold", when used with respect to an interest, refer to the ultimate beneficial owner, who must register and report such interest regardless of whether it is held directly or through a nominee or other financial intermediary. Such terms do not refer to a nominee or other financial intermediary who holds such interest on behalf of the ultimate beneficial owner.

(9) The term "equity or ownership interest" shall not include—

(A) any note, bond, debenture, loan, obligation, or other evidence of indebtedness, any put, call, straddle, option, or privilege on any debt, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any debt; and

(B) any mineral interest other than an interest in fee simple absolute or a reversionary interest.

(10) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(11) The term "branch" means the operation or activities carried out by a person in a different location in its own name, rather than through a separately incorporated entity.

(n) EFFECTIVE DATES.—(1) Subject to paragraph (2), this section shall take effect on the effective date of the regulations prescribed under subsection (j).

(2) Subsection (j) of this section shall take effect on the date of the enactment of this Act.

○

II

101ST CONGRESS
1ST SESSION

S. 856

To amend title 13 of the United States Code and the International Investment and Trade in Services Survey Act to improve the quality of data on foreign investment in the United States.

IN THE SENATE OF THE UNITED STATES

APRIL 19 (legislative day, JANUARY 3), 1989

Mr. MURKOWSKI introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend title 13 of the United States Code and the International Investment and Trade in Services Survey Act to improve the quality of data on foreign investment in the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ACCESS TO CENSUS DATA BY BUREAU OF ECONOMIC ANALYSIS.

(a) ACCESS TO DATA.—Section 9 of title 13, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) Any officer or employee of the Bureau of Economic Analysis who swears to observe the limitations imposed by paragraphs (2) and (3) of subsection (a) and be subject to the provisions of section 214 of this title may use the information furnished under the provisions of this title for the purposes enumerated under the International Investment and Trade in Services Survey Act.".

(b) CONFORMING AMENDMENT.—Subsection (a) of section 9 of title 13, United States Code, is amended by inserting "or subsection (c) of this section" after "section 8 of this title".

SEC. 2. AMENDMENTS TO THE INTERNATIONAL INVESTMENT AND TRADE IN SERVICES SURVEY ACT.

(a) PURPOSE.—Section 2(b) of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101(a)) is amended by inserting after "the impact of such investment and trade," in the first sentence the following: "to provide for the collection and use of information on direct investments owned or controlled directly or indirectly by foreign governments,".

(b) ACCESS TO INFORMATION.—Section 5 of the International Investment and Trade in Services Survey Act of 1976 (22 U.S.C. 3104) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

"(d) COMMITTEE REVIEWS AND REPORTS.—

"(1) Notwithstanding any other provision of this section restricting disclosure of or access to information submitted under subsection (b)(2), the President, or the President's designee responsible for monitoring the impact of foreign investment in the United States and coordinating implementation of United States policy on such investment, is authorized to review any such information in order to evaluate, analyze, compare, or verify the nature and extent of foreign investment in the United States.

"(2) Authorized officials and employees designated by the President to perform functions under this subsection shall have access to, and may obtain copies of, any information submitted pursuant to subsection (b)(2), including all records, documents, reports, books, papers, and other materials related thereto. Such access shall be granted promptly but not later than 5 days after a duly authorized official or employee has made a request therefor.

"(3) Except as provided in this subsection, an official or employee designated to perform functions under this subsection shall not disclose to any other person or organization any information, including any records,

documents, reports, books, papers, and other materials related thereto, acquired during a review conducted pursuant to paragraph (1), that specifically identifies any person who furnished information pursuant to subsection (b)(2). The President shall establish such procedures and safeguards that are necessary to prevent the unauthorized disclosure of this information. An official or employee designated to perform functions under this subsection may discuss any matter relating to such information with officials or employees designated to perform functions under the data collection program.

"(4) The President or the President's designee may submit a report to the Congress on any review conducted pursuant to paragraph (1), except that any such report shall not specifically identify any person who furnished information pursuant to subsection (b)(2). Nothing in this subsection shall prevent an official or employee designated to perform functions under this subsection from discussing the findings, conclusions, or recommendations of a draft or final report with a committee or subcommittee of the Congress.".

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The CHAIRMAN. Congressman Bryant, the Senators have very graciously yielded under the pressures that you are counsel over here on the Hastings case, and we will be glad to hear from you at this time.

STATEMENT OF HON. JOHN W. BRYANT, U.S. REPRESENTATIVE FROM TEXAS

Mr. BRYANT. Thank you, Senator Hollings. I will only take a few moments. I appreciate your allowing me to testify early because of my duties as lead counsel in the impeachment trial of Judge Alcee L. Hastings which is now underway in the Hart Building.

Mr. Chairman, I am delighted that you have decided to hold this hearing this morning.

Five years ago I began investigating the matter of foreign investment in the United States in some depth and discovered that we did not have adequate data available to us to reliably assess its effects.

I also discovered that others—economists, scholars, congressional committees—had over the last decade or more attempted to study foreign investment here and had run up against the same barrier to meaningful research, the lack of reliable and useful information.

According to our best available estimates, in the last eight years, foreign investment in American farmland, factories, banks, businesses, buildings, government securities and other economic assets has tripled probably to more than $1.7 trillion. I want to emphasize that as an estimate. Many experts believe it is far greater. I happen to fall in the latter category.

Foreign money has been financing an enormous new type of economic activity in our country and the sheer magnitude of these investments has resulted in increased foreign influence in the U.S. economic policy-making and political decision making that goes on in Congress.

It is fair to observe that historically foreign investment has allowed emerging nations, including our own nation in the nineteenth century, to develop their economies. But we have to remember as we approach this topic that we are no longer an emerging nation, that we are no longer a developing economy, and we may very well be trading our economic sovereignty for a security blanket of foreign money, not for the purpose of fostering long-term growth, but rather to sustain a high national life-style. This would be a tragedy.

To finance budget deficits and to pay for foreign products, in effect, America has been selling off its productive capacity. That is to say, selling off the family jewels to pay for the last eight years' night on the town.

This surge of foreign capital and our growing dependency on it is the greatest change now taking place in our economy. The point that I want to emphasize to the committee today is that it is a change we are not equipped to comprehend. Unlike other nations, we do not require disclosure of basic information on foreign ownership in a form that is useful or a form that can be used for sound analysis or for informed decision making.

I am certain that you are going to hear from other witnesses today as we have heard from in past hearings who will say that we already collect enough data, enough information on foreign ownership in the United States through legislation already on the books with such confidence inspiring titles as the "International Investment Survey Act" and the "Foreign Agricultural Investment Disclosure Act." I want to explain just briefly why the best of the information currently available is of little or no use to policymakers.

The Department of Commerce has two sources of data on foreign investment. The first one is the Office of Trade and Investment Analysis. In its publication you can find a long list of foreign investments by name, but if you investigate it carefully, you will find it is merely a compilation of newspaper stories and other already published sources.

In the front of the book there is a disclaimer that the department does not stand by and is not responsible for the information in it. If you look back at the history of inquiry into this area, you will find that the House Government Operations Subcommittee on Commerce, Consumer and Monetary Affairs under the late Chairman Rosenthal concluded that this was an all but useless activity done primarily for public relations to give the impression of a systematic and reliable collection of data.

The Department of Commerce also houses the Bureau of Economic Analysis which does systematically collect data on foreign investments in U.S. businesses under authority of the International Investment Survey Act. But the Bureau of Economic Analysis keeps that data completely secret, even from Congress, and publishes only aggregate statistics which are of no use to analysts.

Furthermore, the BEA does not request the identities of the individual ultimate foreign owners, so they are, in effect, allowed to hide from the Bureau of Economic Analysis behind anonymous dummy corporations thereby depriving us of a picture of what really is going on with regard to foreign investment in our economy.

I want to point out that even the Bureau of Economic Analysis aggregate statistics are incomplete by their own admission. The Commerce Department reports a so-called statistical discrepancy in the figure for 1981 through 1987 indicating that the agency believes it has completely missed at least $223 billion in foreign capital which has entered the United States, but which is not reflected in their compilation of U.S. assets acquired by foreign investors. Other estimates of that ignorance gap are much, much higher.

I think that Senator Exon stated it correctly a moment ago when he said that he understood that about 16 different agencies collect data with regard to foreign ownership. That is true. It is a hodgepodge of information, and it is not collated in any fashion or organized in such a way that objective analysts can look at it and reach any conclusions about where we may be headed.

I submit to you today that it would probably be in your interest for me to cut this statement short and submit the rest of it for the record, but we do not have the data necessary to determine where we are going.

I have introduced legislation, "The Foreign Ownership Disclosure Act" which has passed the House twice. I will not burden you with

an explanation of the details of it, but in effect it would simply require that we have disclosure of foreign ownership here—large assets taken over by foreign interests—so we can determine where foreign ownership is beginning to concentrate in important sectors of our economy. That is basic information necessary for intelligent policy-making. Every other country has it.

I think it is a great mistake for the adversaries of this legislation to come forward and urge us in effect to consciously pursue a policy under which we would remain ignorant of what is the most dramatic new phenomenon in our economy.

I appreciate very much the opportunity to come and express my views this morning.

[The statement follows:]

STATEMENT OF HON. JOHN BRYANT, U.S. REPRESENTATIVE FROM TEXAS

Mr. Chairman and members of the Committee, I appreciate the opportunity to speak before you this morning. Five years ago I began investigating the matter of foreign investment in the United States in some depth and discovered that we did not have adequate data available to us to reliably assess its effects. I also discovered that others—economists, scholars, congressional committees—had over the last decade or more attempted to study foreign investment here and had run up against the same barrier to meaningful research, the lack of reliable and useful information.

According to our best available estimates, in the last eight years, foreign investment in American farmland, factories, banks, businesses, buildings, government securities, and other U.S. economic assets has tripled to more than $1.7 trillion. Foreign money has been financing a record borrowing binge, while disguising the fact that we are living dangerously beyond our means. Floating on a feather bed of foreign financing, the United States has fallen from its status as the world's largest creditor nation in 1982 to become the largest debtor nation in history, with a foreign debt exceeding those of Mexico, Argentina, and Brazil combined.

We may be paying for the irresponsible budget and trade policies of the past eight years with our economic sovereignty, as authority over vital decisions affecting American jobs, business goals, and prosperity moves overseas. Excessive foreign ownership in our high technology industries could narrow our strategic and competitive edge. Excessive foreign ownership in our energy and defense-related industries could endanger our national security.

The sheer magnitude of these investments has resulted in increased foreign influence in U.S. economic policymaking and political decisionmaking.

Historically foreign investment has allowed emerging nations, including our own in the 19th century, to develop their economies. But we must remember that we are no longer an emerging nation; we have the mature economy of a world leader. And we may be trading our economic sovereignty for a security blanket of foreign money, not to foster long-term economic growth, but to sustain a high national lifestyle. To finance budget deficits and pay for foreign products, America has been selling off its productive capacity—selling off the family jewels to pay for an eight year night on the town.

This surge of foreign capital, and our growing dependence on it, is the greatest change now taking place in our economy, but one we are ill-equipped to comprehend. Unlike other nations, we do not require disclosure of basic information on foreign ownership in a form useful for sound analysis or informed decision-making.

I expect that you will hear from other witnesses today that we already collect enough information on foreign ownership here, through legislation with such confidence-inspiring titles as the "International Investment Survey Act" and the "Foreign Agricultural Investment Disclosure Act." I will explain briefly why the best of the information currently available is of no use to policymakers.

The Department of Commerce has two sources of data on foreign investment. The first is the Office of Trade and Investment Analysis. In its publication, you can find a long list of foreign investments by name. This is merely a compilation of newspaper stories and other already published sources. In the front of the book is this disclaimer:

"While every effort was made to verify the information obtained from public sources, the U.S. Department of Commerce is not responsible for any inaccuracies or gaps in information presented in this report."

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And even BEA's aggregate statistics are incomplete. The Commerce Department reports a so-called "statistical discrepancy" in the figures for 1981-1987, indicating the agency believes it has completely missed at least $223 billion in foreign capital entering the United States. Other estimates of the ignorance gap are much higher.

The "Agricultural Foreign Investment Disclosure Act" also invites anonymity. The Agriculture Department lists 270,000 acres of Texas agricultural land owned by residents of the Netherland Antilles—one acre for every man, woman, and child who lives there. In all likelihood, none owns even one square inch, because the registered landowners are, in fact, dummy corporations.

My legislation, H.R. 5, "The Foreign Ownership Disclosure Act," would remedy this deficiency in the information available to policymakers. The bill would simply require the systematic registration and disclosure to those researchers and policymakers who need the information on major foreign-owned interests here.

There are two separate thresholds, with different reporting requirements. The first threshold is for interests of more than five percent in a U.S. business or real estate holding valued at more than $5 million dollars. For this threshold, which applies to the vast majority of interests covered by the bill, the bill asks only: "who are you, where are you from, what threshold interest do you hold, and what is the value of the U.S. economic asset in which you hold the interest?"—information that would fit on a postcard.

The second threshold is for controlling interests over 25 percent in a U.S. business with assets or annual sales exceeding $20 million. For this threshold, the bill asks for basic financial data, less than what publicly traded American corporations—even of much smaller size—already disclose to the Securities and Exchange Commission.

Access to the information collected, would be made available to the policymakers and researchers who must need it. Authorized Commerce Department employees, congressional committees, Congress, General Accounting Office may get it, and an agency in each state may get it. In addition, qualified researchers may apply to the Secretary of Commerce for access.

The energy with which the foreign investment lobby has fought this modest proposal is astounding. They have consistently attempted to characterize my proposal as some onerous restriction that would inhibit foreign investment here. But the truth is quite the opposite. As anyone who has read the proposal knows, it creates no restrictions at all. It requires no preclearance at all. It simply asks major foreign investors to sign in *after* they have walked through our open door. The U.S. would still have the most open foreign investment policy in the world—in stark contrast to the other nations which impose preclearance requirements and all sorts of restrictions on American investors.

Japan, whose multinational corporations and government are opposing this simple reporting measure, flatly prohibits foreign ownership of more than 50 percent in energy companies or 25 percent in high-tech companies. Several Japanese agencies pre-screen each investment in every industry, soliciting comments from Japanese competitors; based on those comments, the agencies deny or alter investments that they determine "harm the national security, disturb the public order, or hamper public safety," "adversely and seriously affect" Japanese companies, or "adversely affect the smooth operation of the national economy." *Any* investment could fall victim to these vague requirements.

The other major industrial countries also have restrictive policies. In fact, investment restrictions are the norm; our complete openness is the exception. Even England's and Switzerland's policies are much more restrictive than ours.

For many countries, the restrictions are hidden in places you would never suspect. A Commerce Department official advised my office that the only way for

American investors to find out about the investment restrictions in a particular European country—whose ambassador to the United States has personally lobbied against my proposal—was to "hire a lawyer, try to make the investment, and see what they run up against."

Simple reporting, such as my bill would require is not a restriction at all, as some would have you believe; quite the contrary, it is internationally recognized as a completely different animal by the Organization for Economic Cooperation and Development, composed of the major Western industrialized nations and Japan. In the 1984 "Declaration and Decisions on International Investment and Multinational Enterprises"—to which the United States is a signatory—the OECD called for elimination of discriminatory foreign investment restrictions and adoption of national treatment for foreign-owned companies. In the same declaration, the OECD called for foreign-owned companies to register and publish the very kind of information that my amendment calls for. In other words, the United States government has agreed in the international community to the very disclosure that first the Reagan Administration and now the Bush Administration so vigorously opposes.

Legitimate foreign investors are here because they see their best investment opportunities here—secure and profitable ones. No simple reporting requirement is going to change those opportunities. To those who suggest that foreign investors will take their money elsewhere as a result of this reporting requirement, I ask where will they take it? They will not find a more open investment climate anywhere in the world. Why would simple disclosure stop them from investing here, if much more onerous requirements have not stopped them and Americans from investing abroad?

Our current policy of ignorance handicaps our ability to responsibly manage our own economy. We don't have enough information to even know most of the questions we should be asking, but I will venture to suggest a few I believe we *ought* to be equipped to answer.

First question. Is there a line beyond which it is not in our economic interest to have foreign ownership of a particular industry? Does foreign control in that industry beyond some point begin to endanger our national security?

Major OPEC acquisitions are reported or rumored to be taking place in the U.S. petroleum exploration and refining industries at bargain basement prices. Three of the acquisitions we know about: Saudi Arabia owns half-interest in Texaco's refineries. Venezuela owns half-interest in the refineries of Citgo, the gas you buy if you ever fill up at 7-11. Kuwait owns multi-billion dollar Santa Fe Energy and a significant interest in British Petroleum—parent company of Standard Oil of Ohio, holder of the lion's share of Alaska's 5-billion-barrel Prudhoe Bay oil reserve.

Already the Energy Department estimates that 23.5 percent of our domestic refineries are foreign owned and that foreign ownership of our domestic energy industry has tripled to more than $33 billion worth in the past eight years. How much of the rest of our petroleum industry is foreign-owned? What are the effects of such purchases on our energy independence? We can't assess these questions with currently available data.

Second question. How much foreign influence is taking place in the American electoral process? How do we guard against the funneling of campaign contributions into U.S. political campaigns anonymously from abroad, as we know happened during President Nixon's 1972 reelection campaign?

Congress amended the Federal Election law to stop that practice in 1974. Thomas Harris, Commissioner on the Federal Elections Commission from 1976-1986, who also served as its chairman, is a vocal opponent of the practice that has developed since the 1974 act of foreign-owned or controlled U.S. companies forming political action campaigns. While the FEC has asked Congress for guidance as to whether it intended to allow this practice, in the meantime the FEC is allowing it to continue, as long as the PACs do not take any direction from the parent companies or any other sources. But Ex-commissioner Harris says that it is not currently possible for the FEC to determine whether the PACs *are* taking direction from abroad, because it is impossible even to determine which U.S. companies with PACs are foreign owned.

Third question. When is foreign investment creating jobs and when is it displacing them? When is it increasing opportunities for U.S. businesses and when is it shutting them out?

In 1987, three House Members asked the General Accounting Office to focus on these very questions in an examination of foreign investment in the U.S. auto and auto parts industries. As the final report notes, the lack of reliable data severely handicapped the efforts of GAO investigators to answer these questions meaningfully. GAO had to rely on interviews with auto union officials and auto executives for

its tentative conclusion—that foreign investment in the U.S. auto and auto parts industries may have created as many as 112,000 American jobs, or it may have eliminated as many as 45,000.

My opponents always claim that a Commerce Department statistic indicates that foreign investment in the U.S. has created 3 million American jobs. This claim is highly misleading, and I would like to take a minute to explain why.

What the Commerce Department statistic really indicates is that foreign-owned companies which file reports with the Bureau of Economic Analysis say they employ a total of 3 million workers in this country. But some of these workers are foreign employees brought over from the foreign owner's home country.

In addition, this statistic does not indicate how many jobs the foreign owners have created, but how many employees he has. There is a big difference. Let's say, for example, that a foreign company takes over a U.S. company that employs 20 thousand workers. After the takeover, the new foreign owner fires 10 thousand of those workers. It moves 9000 of those jobs overseas, and brings in 1000 workers from the foreign home office. Ten thousand Americans have lost their jobs, but the Commerce Department would say that the foreign worker has "created" 11 thousand American jobs—the ten thousand Americans who kept their jobs and, and the one thousand foreign workers now employed in the U.S.

This is exactly what happened when Campeau, a Canadian investor, took over Allied and Federated Stores. Thousands of American workers *lost* their jobs, but the Commerce Department scored it as a *creation* of thousands of U.S. jobs by a foreign investor.

With 3 million American workers now dependent on foreign companies for their livelihood, don't we have a right to some basic information about those companies.

Opponents of my proposal are, in effect, arguing that our growing dependence on foreign financial assistance compels us to remain ignorant about it. They try to characterize the debate over my proposal as about whether foreign investment is good or bad or whether it should be restricted or not. This is a much easier debate for them than the real debate, which is whether we can responsibly choose to remain in the dark as public concern continues to mount and as people, including some prominent Americans, begin questioning the merits of undisclosed foreign investment here.

In a January 1988 speech to the Economic Club of Washington, New York investment banker Felix Rohatyn said he had come to question the desirability of complete freedom for foreign investors in view of "our growing dependence" on money from abroad. In the January 25, 1988 issue of *Forbes* Magazine, Malcolm Forbes called for the immediate creation of a "Board of Knowledgeables whose approval would be required before *any* foreign purchase of any significance would be allowed of *any* consequenetial U.S. company—regardless of size." Most recently, in the July 10, 1989 issue of the magazine, Mr. Forbes concludes that the government does not currently collect adequate data to determine who outside the United States owns what in the United States. He goes on to urge Congress to swiftly pass a bill to require basic foreign ownership reporting.

America is now hundreds of billions in debt internationally, with predictions that we may be more than a trillion dollars in debt by the early 1990's. In the coming years, Congress will increasingly hear emotional appeals to restrict foreign investment from people who fear it or oppose it. We will hear other emotional appeals to promote and subsidize foreign investment from people who are desperate for financial assistance. The pressure for Congressoinal action will increase continually. If Congress is not equipped to make sound policy judgments based on reliable information, we will be left at the mercy of textbook theory, anecdote, and emotionalism.

It would be highly irresponsible of us to consciously remain in the dark as public concern continues to mount. We need reliable information, and we need to get it into the hands of the numerous researchers inside and outside of government on which Congress relies for the analytical base on which to make responsible public policy.

The CHAIRMAN. Congressman, as I understand it, the Harkin bill is substantially your bill that was introduced on the House side, is that right?

Mr. BRYANT. I believe that is correct.

The CHAIRMAN. And, therefore, you are testifying in support of that bill. Where is your bill now on the House side?

Mr. BRYANT. It is in committee. It passed the House in the last congress once as an amendment to the trade bill. It passed the

House a second time late in the session as a freestanding bill. I was allowed to bring it to the floor because we had—I had agreed to go along with dropping it from the trade bill in order not to jeopardize the Exon-Florio language and to get the bill signed into law. We passed it so late in the session it was not possible for the Senate to take it up, and we hope to try again this year.

The CHAIRMAN. Well, we appreciate your appearance, and I understand the pressures. Let me yield in the order I have them here.

Senator Exon.

Senator EXON. I have no further questions of Congressman Bryant. I just want to emphasize once again that I have appreciated the fact that he has been very cooperative all the way through on this and if it were not for his cooperation, we could not have passed the Exon-Florio amendment which I think was the first significant step in this area.

I share his view that maybe we should be going further, and I emphasize maybe at this time because I think one of the most serious things we have facing us today is as the Congressman has just indicated, we just do not know where we are going. I do not believe from first blush that his bill would do anything but help straighten this matter out. But, maybe in cooperation with that we should be madating a study of some kind to try and put this in perspective.

We are spending an awful lot of money and getting nothing from it right now. I think with regard to collecting information and his bill or anyone else's bill is not going to be very effective unless we have reliable information that is meaningful with regard to a measuring stick.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. Congressman, the question I mentioned earlier, in your statement you say the bill would simply require the systematic registration and disclosure to those researchers and policymakers that need the information on major foreign-owned interests here, and you say it is roughly the same as foreign countries require. Can you give me a little more evidence on that?

Mr. BRYANT. On the contents of the bill?

Senator PACKWOOD. No, on what it is that foreign countries require in terms of—and pick half a dozen if you want, of the best ones or the worst ones as you might regard them—what they require of U.S. investment overseas in terms of disclosure.

Mr. BRYANT. Senator Packwood, I could bring forward a publication that was published last year by the Congressional Economic Policy Institute that lays it out in great detail.

Senator PACKWOOD. Good.

Mr. BRYANT. If I might just make a summary comment about it, in almost every case other countries collect a great deal of information with regard to foreign ownership and also in almost every case they impose a prohibitions limitations conditions on our investments in their country or investments from outside their borders in their country. We do not do that, and I do not propose that. I just say let us get some information so we will know where we are headed.

Senator PACKWOOD. So, in Luxembourg, Belgium, The Netherlands, Germany, they would know specifically how much U.S.

money is invested, who owns the money, who controls it here, what they control there in significant detail?

Mr. BRYANT. That is correct. They would.

Senator PACKWOOD. Thank you. I have no other questions, Mr. Chairman.

The CHAIRMAN. Senator Robb.

Senator ROBB. Thank you, Mr. Chairman.

Like the chairman and several of our colleagues as former governors, I was involved in the recruitment and solicitation of some of the investment that is now being catalogued. I would have to say that at a time a few years ago we were able to keep pretty good tabs on exactly what investment had occurred because we normally kept it as our little comparative shopping list of how we were doing in particular areas.

I appreciate the importance that Mr. Bryant and other attach to this legislation. I have no particular questions at this time, Mr. Chairman.

The CHAIRMAN. Very good.

Senator Ford.

Senator FORD. Congressman Bryant, does your study in concern here show a concentration by any particular country in any particular industry or facet of our economy?

Mr. BRYANT. Well, Senator, I could read off aggregate figures which I did not bring with me today that I think are sufficient to alarm us and to think we ought to at least find out what is going on.

I did not think you would want me to bring figures forward.

Senator FORD. Well, I think what the point, if I understand the legislation correctly, and what we are driving at is to find out where the concentration is. Is it all in downtown office buildings in Los Angeles and New York or is it in industry or munitions or, you know, what are they after?

Mr. BRYANT. Let me state some figures that most folks agree with. 39 percent of downtown Houston, Texas, over 40 percent of downtown Los Angeles, one third of downtown Washington, D.C. are foreign owned today.

I have in the statement——

Senator FORD. This is basically office buildings that you are talking about?

Mr. BRYANT. It is real estate, that is correct. The Energy Department now estimates that 23.5 percent of our domestic refineries are foreign owned and that foreign ownership of our domestic energy industry has tripled to more than $33 billion in the last eight years.

I wish I had brought my usual speech on this matter forward to you to tell you how bad the problem can be made to look if you look at aggregate figures.

Senator FORD. I do not know whether I can stand it or not, but would you send me your usual speech.

Mr. BRYANT. I think it is important to emphasize that anecdotal data alone just opening the newspaper every day is enough to tell us that we ought to at least get the same kind of a handle on this information that every other nation has on it, and that is really all that is being proposed here.

And I would also point out to you, I think it is inevitable that there will be demands for dramatic legislation with regard to foreign ownership in the future if the current trend continues.

We should not enter that environment without information so we can make intelligent decisions. As Senator Robb said a moment ago, that as Governor he was involved of solicitation foreign investment for his state. My state does it, all of them do it.

We, in effect, in America pursue a contradictory policy. Almost every state pursues foreign investment, but about half the states have recently passed statutes on their books prohibiting foreign ownership in, for example, farmland or some other areas. So, we have a kind of schizophrenic attitude.

I think this attitude is a result of the fact that some foreign investment is very good for us at our particular stage of economic maturity. But some of it may be presenting a threat to our ability to control our economic future.

But we cannot reach conclusions about it. In the last Congress Representative Dingell and Representative Kaptur asked the GAO to do a study, for example, on the impact of foreign ownership in the domestic auto parts industry. The GAO reported that they could not reach any conclusions because they did not have enough data. I do not think that that is an advantageous situation for any of us.

The CHAIRMAN. Thank you.

Senator Pressler.

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Thank you, Mr. Chairman. I do not have any questions for our witnesses, but I do have an opening statement.

Mr. Chairman, thank you for scheduling this hearing on an issue of increasing visibility and concern. I'm sure I am not alone when I say my Senate office is receiving more and more mail on the subject of foreign investment in America.

The reason for concern is a perceived lack of response from our government. It is understandable that Americans are concerned when they read that 15.7 percent of the United States gross national product in 1988 and 7.7 percent of total assets in the United States are owned by foreign investors.

In South Dakota, foreign holdings have a total gross book value of $393 million (or. 1% of the total). However, my state's most precious resource is its bountiful land which is subject to foreign ownership. The South Dakota state legislature recognized the potential for trouble when it passed a law that said "no alien who is not a resident of the United States is permitted to acquire more than 160 acres of agricultural land."

The two bills we are discussing today deal with the collection and dissemination of information relating to foreign investment in the United States. The sixteen federal agencies that currently are involved in this process make for a bureaucratic nightmare. There must be a better way.

I look forward to learning more about how these bills will increase our understanding of the foreign investor's role in the American economy.

The CHAIRMAN. Congressman Bryant, you are onto something of significance. I think the problem is when you use the word schizophrenic, that is exactly our problem. We have got the Federal Government and all in Congress concerned about foreign investment.

We are not against foreign investment. We see all the farmlands being bought up and we see all the other particular properties, as you describe it, and yet at the state level a governor is not worth his salt unless he is out there hustling, trying to get that foreign investment.

I think that hustling and getting the foreign investment is good as of now. What you are trying to say is let us measure it, let us find out what it is doing and how it develops and specifically how it could become a controlling factor.

We know in the field of airlines, communications, mineral rights on public lands, shipping, nuclear power, we limit or have a prohibition against foreign ownership. And what you are asking for here is a listing at least so we will understand and know exactly how far to go or what to do about it. And I appreciate your leadership on it.

We in the Congress are indebted to you for bringing it in a forceful manner to our attention, and we will leave the record open for further questions and excuse you now.

Mr. BRYANT. Thank you very much.

The CHAIRMAN. Senator Harkin, we appreciate your yielding to Congressman Bryant, and we will be delighted to hear from you now at this time on your bill.

STATEMENT OF HON. TOM HARKIN, U.S. SENATOR FROM IOWA

Senator HARKIN. Mr. Chairman, thank you very much for holding this hearing, again. I also want to thank my colleague from the House side for taking his leadership role in this, and I have worked very closely with him and his staff over the years. They certainly have done yeoman's work on getting the data and all of the information that we needed to draft these bills.

The bills are the same basically in the House and the Senate. Mr. Chairman, I guess I could start off by saying we are just back again. We were here last year when you were kind enough to have the first hearings on this. We are back again because the problem has not gone away. In fact, it is getting even worse.

And I am sure that you all saw this headline that appeared in one of our national magazines. I heard a lot about it out in my state, "Who Owns America." A lot of people read that. It was in the Sunday paper. It was one of those magazines in the Sunday paper that comes out.

I got a lot of mail on it, and I get a lot of questions about it from my constituents. I guess if you were to ask that question, is America for sale, I guess the answer would be yes.

Since 1980 the amount of foreign investment in the U.S. has tripled to $1.8 trillion. In less than a decade, I need not tell any member of this committee, we have gone from a creditor nation to the largest debtor nation in the world. Right now $329 billion is directly invested in U.S. manufacturing plants, real estate, and banks.

More than half of our cement industry, four of our top ten chemical companies, almost 20 percent of American bank assets are owned by foreigners at this time and again, I would emphasize that the effects of foreign investment are not necessarily bad in the short term. They have helped finance our budget deficits. They have kept inflation down and provided financial opportunities.

But what I am concerned about and I know Congressman Bryant and many others are is the long term. The truth is we do not know how foreign investment will affect our economic and political future.

I would quote our former colleague, Senator Proxmire, who said that with greater dependence on foreign investors, you lose part of our sovereignty, you lose some of your independence.

Mr. Chairman, it does not seem to make sense to me to spend millions on armaments to keep our front door closed while at the same time we leave the back door of our economy open. And I am not even calling for the door to be closed, only that foreign businesses sign in once they come to the door. And buying and selling is the essence of our free enterprise system, but true free enterprise requires the free flow of information.

The fact is in too many instances we do not know who the foreign investors are, we do not know who they are doing business with, are they friendly, are they hostile, are they corrupt, are they drug traffickers. We do not know the answer to that question.

Now, again, last year a number of members of this committee raised concerns with our bill in terms of the disclosure being too public while in response to those concerns we have modified last year's bill by limiting access to this information to authorized persons in the Department of Commerce, the General Accounting Office, and designated state agencies, congressional committees, and selected researchers approved by the Secretary of Commerce.

Over time as ownership of our economic assets has transferred overseas, so has the authority to make important business and economic decisions affecting the prosperity and the independence of our nation because of our current lack of information, we often cannot even determine with confidence whether a foreign investor is a legitimate business or, as I said, a hostile nation like Libya, Iran or maybe even a drug trafficker.

One Commerce Department economist described the current state of official data as "a hodgepodge of statistics that only God comprehends, and the rest of us struggle with."

I think that Senator Exon pointed out earlier of some 16 different federal agencies now collect data on foreign investments, yet the usefulness of this information is often questionable.

A confidential government memo written when the United States froze Iranian assets in the late 1970s I think highlights some of the problems, and here is a quote from that, "There is little information available about Iranian-owned assets in the United States since most transactions may be made without encountering reporting requirements. No one has any firm estimate of size, distribution or composition of Iranian private real estate assets in the United States."

Now, the various agencies responsible for monitoring foreign investments do not coordinate this data, and most often rely on completely different sources.

Now, my colleague Senator Murkowski's bill corrects this problem as far as the Census Bureau and the Bureau of Economic Analysis are concerned, and I certainly support his bill. Levels of foreign investments reported by U.S. Federal agencies are consistently lower than levels reported by the investors' home countries. I found this to be startling since I testified last year, Mr. Chairman.

For 1986 Japanese records reported that Japan had invested $35.5 billion in the United States. Our records showed only $23.4 billion. That is quite a discrepancy. And, again, I would point out that the bulk of this information is not available to Congress or other Federal agencies or for private research.

I find it very ironic, Mr. Chairman, that members of Congress are permitted access to national security secrets but we are banned from data that would assist us in making decisions on our nation's economic security.

Now, a question was asked about how other nations operate. Well, we know in Japan the ministry of finance, the foreign exchange ministries and others screen each proposed foreign investment with each ministry being empowered to block the investment.

Great Britain's Department of Trade and Industry retains the authority to screen all important manufacturing concerns and foreign takeovers. France's Ministry of the Economy and Finance reviews all foreign investment projects. They have several criteria.

Even the OECD in its declaration and decisions on international investments, which the United States signed in 1984, calls for foreign-owned companies to disclose information on their business activities and finances.

Now, earlier Senator Stevens quoted from an article in Forbes—I have not read it yet, but I am going to take a look at it—but I do have a quote here from Malcolm Forbes who called for the creation of a board of knowledgeables to review purchases of major U.S. companies by foreigners.

Financier Felix Rohatyn suggests we may soon find it necessary to establish a legal mechanism to review foreign acquisitions in certain industries. Rohatyn added, and I quote, that such screening procedures will not cause the flight of foreign capital any more than such procedures have caused flight from the U.K., Germany, or Japan.

Mr. Chairman, disclosure has not scared U.S. businesses from investing overseas. Despite pre-clearance requirements, Americans have invested $281 billion in Latin America, $82 billion in Japan and $127.4 billion in Canada.

Mr. Chairman, let me just close by saying that foreign investment has become too important to the American economy for us to remain blind to its implications. Successful companies in the private sector would not dream of making decisions without first reviewing adequate information.

Why should not our government have the same policy? How can we make decisions based on our economic future without the proper and the full flow of this information? Simply put, we need

this in order to maintain our own security and our own independence, Mr. Chairman.

I thank you again for the opportunity to appear, and I thank you again for considering this legislation. I think it is a very important piece of legislation.

The CHAIRMAN. Senator Murkowski.

STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman and Senator Harkin. It is a pleasure to join with you on this important matter. I am pleased to have the opportunity to appear as you review S. 856, legislation to improve data on foreign direct investment in the United States.

First of all, Mr. Chairman, let me state that from the outset that my bill, S. 856, does not discriminate against foreign investors, require public disclosure of proprietary information or limit foreign direct investment.

I think it is important to note that what we have here is a unique situation where there is an awful lot of information, but that information is now allowed to be shared among appropriate policymakers. For example, we have the Bureau of Economic Analysis generating a great deal of information, the Census Bureau generating information, but the Census Bureau cannot share that information with BEA.

Before we ask for new reporting requirements, Mr. Chairman, it would seem to me that we ought to take a look at what we have got now, see if that is adequate, and if there is not a good reason why, for example, the Census Bureau should not be sharing its information on FDT with the policymakers.

If we look at the breakdown of foreign investment in the United States today, there are two basic kinds. One is the indirect which has already been highlighted, investment in government securities, bank deposits, corporate stocks. Some might say that that is underwriting our own deficit. In other words, we need that foreign investment coming into the United States to finance our debt.

I am inclined to think that is absolutely correct. Obviously money goes for the highest return and the least risk, and it is coming into the United States and it is getting a high return and a modest risk.

But we have another area that I think deserves attention from this committee, and that is the direct investments, and that is somewhere in the area of $300 billion out of the approximate $1.5 trillion.

But further, there is a breakdown that is interesting, Mr. Chairman, and that is how much of the foreign investment is foreign government investment. I beg to point out, Mr. Chairman, that there is a difference. We have always welcomed foreign investment in the United States, but when it is foreign government controlled, then it has a different connotation.

We are seeing the Kuwaiti government with ownership in the United States in energy, real estate, other areas approximating $47 billion, the Government of the United Kingdom—$25 billion, the

Government of France—$16 billion. This is a different type of foreign investment. This is foreign government investment. That also means for example that a foreign say Japanese banking system that is basically subsidized by the government of Japan can set an interest rate under the market rate. These are the kind of things that we simply have to have data on as we make policy.

Mr. Chairman, my bill would amend the International Investment Trade and Services Survey Act to codify the collection of data related to the foreign direct investment controlled directly or indirectly by a foreign government.

It would allow employees of the Bureau of Economic Analysis to have access to data collected by the Census Bureau when performing functions under International Investment Survey Act subject to the same constraints that currently protect confidentiality of proprietary information.

It would allow the Bureau of Economic Analysis to share data that it collects under the International Investment Survey Act with the Committee on Foreign Investment in the United States, CFIUS, or any other policymaking body designated by the President to monitor foreign direct investment in the U.S. and to coordinate U.S. policy on such investment, again, subject to the confidentiality protections in existing law.

Under the Foreign Investment Survey Act, BEA was given responsibility for collecting the data on foreign direct investments. However, there are problems with the BEA data hindering analysis of certain public policy issues. According to the GAO, with BEA's current data collection methods, data on specific industry sectors of undeniable national security and commercial interests such as aerospace, semiconductors, biotechnology is simply unavailable. This is because the Bureau of Economic Analysis reports this data in a manner that is insufficient for industry classification. Aerospace, for example, is classified in BEA reports as part of "other transportation."

Problems with data are partially due to BEA's collection methodology. BEA collects its information on an enterprise rather than an establishment level. This means a parent corporation files a single report for the whole corporate family or the "enterprise."

For example, if a subsidiary of a multinational oil company makes a major real estate investment, it would show up in the BEA data as an investment in the petroleum sector rather than in the real estate sector. This type of reporting skews data in all sectors.

In contrast, the Census collects data on both an establishment and a establishment or company basis. Every five years they conduct complete census on manufacturing, distributive trade services, construction, mining, agricultural areas.

The Census also has a wide variety of monthly, quarterly and annual surveys. This type of establishment level data lends itself to farm more detailed analysis by size of establishment, product/industry category, and state location. This type of data is generally lost in BEA's consolidating reporting. BEA and Census acknowledge data sharing could improve analysis without increasing paperwork for foreign investors.

However, surprisingly enough, the Census is prohibited under current law from sharing its data—and, Mr. Chairman, I think you would agree that is a shame. BEA, not Census, is responsible for statistical data of foreign direct investment and should have access to relevant census data.

In codifying the collection of information on foreign direct investment controlled by foreign governments, it is my intent that BEA would use the improved data base created by data sharing to strengthen current analysis of government-controlled investments.

It is not my intent to have additional reporting requirements placed on government controlled investors. Why should we take a closer look at government controlled investments to the extent that the policies of a foreign government, whether they are political and diplomatic or economic and commercial may run counter to the commercial policies of a U.S. affiliate.

It could be assumed that government investors would exercise their ability to materially influence the policy of U.S. affiliates to promote foreign government interests.

Let me cite briefly a recent example that occurred in Great Britain. About a year ago the government of Great Britain decided to end government ownership in British Petroleum and offered its shares in the company in a public offering.

Factors such as the October 1987 stock market crash severely limited participation in the offering. However, when the sale was over, much to the surprise of BP and the British Government, the Kuwaiti Investment Office, an official arm of the government of Kuwait, was the owner of 21.6 percent of the third largest oil company in the world.

While the Thatcher government strongly advocated an open foreign investment policy, the purchase of such a significant amount of BP stock by a foreign government—now this is the difference—a foreign government as opposed to a private foreign investor—was a source of concern.

After a detailed investigation of the case the British Monopolies and Mergers Commission order the Kuwaitis to divest all but 9 percent of its shares in BP. Clearly they felt the purhase was contrary to the objectives of the Thatcher government and was looked upon as a threat to the energy security of Great Britain.

Under the Exon-Florio provision of the trade bill, investments similar to the BP example could come under review if they have major implications for our own national security.

The Committee on Foreign Investment in the United States, CFIUS, is the interagency body designated by the President at this time to monitor foreign investments in the United States and to coordinate U.S. policy on such investment. However, even CFIUS does not have access to disaggregated BEA data. Data regarding individual investments should not be available to the general public, but the body designed by the President to monitor foreign investment should have access to this data for policy reasons. My bill would allow this to occur.

Finally, Mr. Chairman, in drawing the legislation I have sought the input from those in the executive branch that collect and analyze the data, the U.S. Chamber of Commerce, the NAM, and other interested parties. While they have not endorsed the bill, I believe

it effectively addresses the concerns that they have raised over balancing the need for improved data analysis and protecting the confidentiality of proprietary business information.

Again, I thank you for the opportunity to share my thoughts with you regarding S. 856.

[The statement and questions and answers follow:]

STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Mr. Chairman, I am pleased to have the opportunity to appear before the Committee today as you review S. 856, legislation to improve data on foreign direct investment (FDI) in the United States. I want to state from the outset to my colleagues on the Committee that S. 856 doesn't discriminate against foreign investors, require public disclosure of proprietary information, or limit FDI.

WHAT DOES THE BILL DO?

1. Amends International Investment and Trade in Services Survey Act to codify the collection of data related to FDI controlled directly or indirectly, by foreign governments.

2. Allows employees of the Bureau of Economic Analysis (BEA) to have access to data collected by the Census Bureau when performing functions under the International Investment Survey Act, subject to the same constraints that currently protect confidentiality of proprietary information.

3. Allows BEA to share data it collects under the International Investment Survey Act with the Committee on Foreign Investment in the U.S. (CFIUS) or any other policy making body designated by the President to monitor FDI in the U.S. and to coordinate U.S. policy on such investment. Again, subject to the confidentiality protections in existing law.

WHY THE NEED FOR DATA SHARING

Under the Foreign Investment Survey Act, BEA was given responsibility for collecting data on FDI. Through their surveys, BEA collects extensive information on FDI. However, there are problems with BEA data hindering analysis of certain public policy issues. According to GAO, "With BEA's current data collection methods, data on specific industry sectors of undeniable national security and commercial interest such as aerospace, semiconductors, and biotechnology is unavailable." This is because in BEA reports this data is folded into much larger industry classifications. Aerospace for example, is classified in BEA reports as part of "other transportation."

Problems with data are partially due to BEA's collection methodology. BEA collects its information on an "enterprise" rather than an "establishment" level basis. This means a parent corporation files a single report for the whole corporate "enterprise." For example, if a subsidiary of a multi-national oil company makes a major real estate purchase, it would show up in BEA data as an investment in the petroleum sector rather than in the real estate sector. This type of reporting skews data in all sectors.

In contrast, the Census collects data on both an establishment and a company basis. Every 5 years they conduct complete censuses on manufacturing, distributive trades, services, construction mining, and agricultural areas. Census also conducts a wide variety of monthly, quarterly and annual surveys. This type of "establishment" level data lends itself to far more detailed analysis by size of establishment, product/industry category and State location. This type of data is generally lost in BEA's consolidated reporting.

BEA and Census acknowledge data sharing could improve analysis without increasing paperwork for foreign investors. However, Census is prohibited under current law from sharing its data. BEA, not Census, is responsible for statistical analysis of FDI and should have access to relevant Census data.

BETTER DATA ON FOREIGN GOVERNMENT INVESTMENTS

In codifying the collection of information on FDI controlled by foreign governments it is my intent that BEA would use the improved data base created by data sharing to strengthen current analysis of government controlled investments. It is not my intent to have additional reporting requirements placed on government controlled investors.

Why should we take a closer look at government controlled investments? To the extent that policies of a foreign government—whether they are political and diplomatic or economic and commercial—may run counter to the commercial policies of their U.S. affiliate it could be assumed that government investors could exercise their ability to materially influence the policy of the U.S. affiliate to promote the foreign governments' interests. I want to cite a recent example of this type of investment in Great Britain.

About a year ago, the Government of Great Britain decided to end government ownership in British Petroleum and offered its shares in the company in a public offering. Factors such as the October 1987 stock market crash severely limited participation in the offering. When the sale was over much to the surprise of BP and the British Government, the Kuwait Investment Office, an official arm of the Government of Kuwait, was the owner of 21.6% of the third largest oil company in the world. While the Thatcher government strongly advocated an open foreign investment policy, the purchase of such a significant amount of BP by a foreign government with major oil holdings was a source of concern. After the detailed investigation of the case, the British Monopolies and Mergers Commission ordered Kuwait to divest all but 9% of its shares in BP.

SHARING DATA WITH COMMITTEE ON FOREIGN INVESTMENT

Under the Exon-Florio provision of the trade bill, investments similar to the BP example could come under review if they have major implications for our national security. The Committee on Foreign Investment in the U.S., CFIUS, is the interagency body designated by the President at this time to monitor foreign investments in the U.S. and to coordinate U.S. policy on such investment. However, even CFIUS does not have access to disaggregated BEA data. Data regarding individual investments should not be available to the general public but the body designated by the President to monitor foreign investment should have access to this data. My bill would allow this to occur.

CONCLUSION

In drafting this legislation, I have sought the input from those in the executive branch that collect and analyze the data, the U.S. Chamber of Commerce, NAM, and other interested parties. While they have not endorsed the bill, I believe it effectively addresses the concern that they have raised over balancing the need for improved data analysis and protecting the confidentiality of proprietary business information. Again, I thank you for the opportunity to share my thoughts with you regarding S. 856.

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Question 1. Technical experts claim that the merging of Census data with Bureau of Econmic analysis (BEA) data will be extremely difficult. How do you propose to overcome the problems of implementing this informational crosswalk?

Answer 1. BEA & Census both use IRS employer identification numbers to classify respondents. Therefore, initial matching should not be too difficult. One way of addressing possible problems of data incompatibility would be for BEA and census to coordinate the formats they use in their surveys.

Perhaps the biggest obstacle to data compatibility is the lack of communication among all the agencies that currently collect data. While proposals for better data coordination have been in circulation for years. Some agencies seem more concerned about protecting the supremacy of their data than coordinating with other agencies to make all data more useful, and interoperable.

Question 2. If BEA were to receive and report data at the establishment level would the aggregation of their reports still be sufficient protection against readers being able to identify particular companies?

Answer 2. Yes, in fact BEA and Census are involved in a data sharing pilot project now. Both agencies have indicated that they would like to eventually publish the improved data and have indicated that publication could occur without violating current confidentiality requirements.

Question 3. In your testimony, you explain that your intent is to "strengthen current analysis of government controlled investments". What specific information would you want that you can not currently get?

Answer 3. The weaknesses in BEA's overall data collection efforts apply equally to their information on foreign government controlled investments. Reporting investments based on an investors primary industry for example, does not help us ac-

curately understand the true scope of foreign government investment in the U.S. In addition, problems such as lack of accurate information regarding govt. controlled investments on a State by State basis could be partially addressed by data sharing.

Question 4. Why do you oppose public disclosure of investment reports?

Answer 4. As a former businessman, I am sensitive to the business community's concern over public disclosure of proprietary business information. I do not think there is legitimate need for this type of information to be given to the general public because it could be used by reporting firm's competitors. I do however feel that the general public feels that the policy makers designated by the President to monitor foreign investment should have access to this information.

Question 5. Since access to BEA's disaggregated data is limited to executive branch agencies specifically designated by the President, on a case by case basis, it is difficult to scrutinize the quality of the data and BEA's methodology. Why not allow the General Accounting Office (GAO) to audit BEA's data and collection practices?

Answer 5. I might endorse the idea of a GAO audit of BEA's data collection efforts if it is done with the intent of making recommendations for improving data coordination and dissemination between agencies such as Census and BEA.

Question 6. According to GAO, it would require "sufficient resources" to complete the project of linking Census and BEA for the purpose of your bill. Do you know how much this would cost?

Answer 6. More effective data coordination between agencies such as Census and BEA, as well as other agencies that currently collect information related to foreign investment, could reduce costly duplication and thus reduce the cost of data collection in the long run. However, I do not know what the initial cost of implementing such a program would be.

Question 7. Considering that foreign government FDI is only about 9% of all FDI, why are you so concerned about it?

Answer 7. I am concerned because a significant portion of these investments are concentrated in sectors such as the petroleum industry which are vital to our national interests.

Question 8. You are concerned about foreign government acquisitions of U.S. companies where the government might use its control to influence the policy of its U.S. affiliate. If this is indeed a danger—couldn't this be handled by the Exon-Florio process, a similar one to that used by the British government in the BP case?

Answer 8. Yes, but in order to ensure that sensitive investments continue to be in our national security interests, CFIUS must have the ability to monitor these investments on an ongoing basis. That is why I have proposed giving CFIUS access to disaggregated BEA data. I disagree with the assertion of the Department of Commerce that giving this information to CFIUS on an ongoing basis could threaten the confidentiality of data. The premise of the Administration's objection to sharing BEA data with CFIUS would lead one to assume that we should not be entrusting CFIUS with sensitive data they must have in order to perform the responsibilities delegated to them by the President under Exon-Florio.

The CHAIRMAN. The committee is indebted to both of you, Senator Murkowski. You have broken it down, and on banking, as you are a banker, I can tell you from other industries that I have worked with over the years, you would not say the government controls industries, but they are a tremendous assist to all their industries, whether it be textile, banking or otherwise.

We know it in Washington. They do not see it that much in the state capitals, but in Washington themselves we have over 113 different lobbying firms for the Japanese. All you have to be is chairman of this committee. Any bill that comes up, I cannot see my own constituents without the foreign lobbyists lining up.

—And, incidentally, the Japanese spend over $100 million, they are paid better than you and me. They have got more people representing them here in Washington. Specifically with the group of seven, the G–7 countries excluding, of course, the United States, the investments, let us say, of Japan in other countries, in Canada or any of the other G–7 countries—has any of the requirements there chilled Japanese investments that you know of?

Senator MURKOWSKI. Not to my knowledge.

The CHAIRMAN. We keep hearing about chilling. I have not heard of anybody being chilled. Can you think of any reason—then I will ask perhaps the other witnesses why they would be chilled. Do you know?

Senator MURKOWSKI. No.

The CHAIRMAN. Senator Harkin, because we have a good attendance here, I want to yield. Let me be the devil's advocate.

I have in my state two firms, one Milliken, and he has about 7,500 or 8,000 employees, the textile firm owned by Roger Milliken, and incidentally outstanding, and Michelin, outstanding. Michelin is a French firm. They have about 8,000 employees.

Now, Michelin can say look, Milliken does not want to fool with the government, so all he does is he gets his charter, lists his officers and everything else, and then that is it. He does have to file his annual IRS returns of a confidential nature, but he does not have to report anything else. Why should Michelin? What is the trouble or the problem that you are trying to correct? What is wrong with Michelin being treated the same way as Milliken? Why are you going to require more from Michelin than you will require from Milliken?

Senator HARKIN. I would take a look at, first of all, what the government of the home office of Michelin requires. That's France, right?

They require pre-clearance of all foreign investments in their country, so we do not have an equal kind of a system with the government of France where Michelin has its own home office.

And, again, I want to say that not all foreign investment is bad. I mean, some of it has been good, and I am not trying to ban it, but I think that there comes a point where we have to look at different industries, different areas to see how much they own and if they own a plant someplace, I do not know that I would get so upset about that.

But I think it is what Senator Murkowski was talking about, the aggregate ownership in certain areas that is coming in and also just to get a handle on the total that is coming in.

One other thing I forgot to mention, Mr. Chairman, was that last year, 1988, interestingly enough was the first year, the first year ever that the U.S. suffered a foreign direct investment deficit. In other words, the U.S. invested $327 billion abroad. Foreigners invested $329 billion estimated in America, the first time that has ever happened.

So, not only are we the largest debtor nation, more people are investing here than we are investing abroad.

But, to get back to your one point on Michelin, again, I would not see anything wrong with it, but I would think that they ought to be required to sign in and report.

The CHAIRMAN. Very good. Senator Packwood.

Senator PACKWOOD. Senator, let me read the list of people this information is to be confined to and I want to make sure—I am reading it from Mr. Jasinowski's statement. This information that will be gathered will be limited to be following:

1. All officials and functionaries named in the bill including consultants and persons working on contracts pursuant to the bill.

2. All committees and subcommittees of Congress with such privacy protection procedures as established by each committee on its own.

3. The GAO, with privacy protection as established by the Comptroller General, for all states via one designated agency in each state, with each state establishing its own privacy protection procedures.

Then lastly, persons performing qualified research under procedures established by the Secretary of Commerce by rule or regulation.

Is that correct?

Senator HARKIN. Yes.

Senator PACKWOOD. Tom, do you really think with that breadth of revelation that this is going to be private information?

Senator HARKIN. Well, it is a lot more private than what it was before. I have tried to tighten down on some of it but to leave it open, and that could be modified. I am not beholden just to that whole set, but I was trying to delineate a group of individuals that would need legitimate access to that kind of information.

Let me point out one other thing, Senator Packwood, that I found very interesting. We as Members of Congress are denied access on BEA data on individual investments, but look at the BEA people themselves.

My staff found that the BEA employees handling this data on individual investments are not even cleared. They do not even have a security clearance, and yet those of us who get security clearances who have access to the most secure information of the United States Government, we cannot get the data.

But the BEA employees themselves who get it do not even have a security clearance. They are just simply told every day, do not divulge the data. What kind of sense does that make?

Senator PACKWOOD. Well from a pragmatic standpoint, based upon experience, it probably makes pretty good sense.

Let me ask you another question. I am a little confused. I understand what pre-registration is, but there is apparently an honest debate between what other countries require and what you and Congressman Bryant say they require and what the Administration and Mr. Jasinowski say they require. Let me read his statement again.

> But even where extensive and discriminatory foreign government reporting requirements exist, the confidentiality of business information is respected. Contrary to the assertions of the authors of the bill, there is no international precedent for this bill.
>
> This point was clearly made in the December 1988 Treasury Department survey of foreign government investment reporting and disclosure rules. The Treasury study concluded that no other major, industrial country "keeps a public registry for specific investments nor discloses detailed information, even to selected researchers or GAO counterparts."

Is that true?

Senator HARKIN. Yes, that is true.

Senator PACKWOOD. So the information that I think is going to become public here, no matter how we structure it, or at least the way the bill is structured, is not required in other countries of our investments in those countries?

Senator HARKIN. But there is a difference, though, and I tried to answer honestly and truthfully to your question, "Is that true," and that is true. But keep in mind that these other countries, almost every other country requires pre-clearance or screening of different agencies of that government. It is even more strict than disclosure. We are not asking for screening. They have that data.

Senator PACKWOOD. That argument is also as to whether or not we have the data and there seems to be a difference of opinion on that. Mr. Darby will say we have the data. The professor coming later on will say we do not, and he has done extensive research on it.

But is there a difference between pre-registration, where we say no, or if France says, no Mr. Harkin we do not want your company in France. But if they say yes, you can come to France, do they then apparently have much less requirements once they have said you can come, than your bill would have although there is no pre-registration?

Senator HARKIN. No, now that is not so. Because in their screening requirements they require all of that kind of information, then they make their judgment whether or not they are going to let you in or not. They have that data.

Senator PACKWOOD. Well, I understand that if they decide to let you in. However, the data apparently is not available to the general public in those countries.

Senator HARKIN. But I submit, and I think I am correct, that it is available to certain policymakers in those countries—the ministries and others that make the basic economic decisions in those governments. They have that data.

Senator PACKWOOD. Of course, I think the Administration is going to argue that that data is available to selected Administration officials here.

Senator HARKIN. If that is so, then why did Japan report that they had invested $35 billion here and our agencies only reported they invested $23 billion?

Senator PACKWOOD. That is a good question. I cannot answer it. I am just trying to figure it out.

Senator HARKIN. I am, too. I think there are some discrepancies out there.

Senator PACKWOOD. Mr. Chairman, I have to go to the Finance Committee. This is a very well structured hearing and I wish I could stay. Thank you very much.

The CHAIRMAN. Thank you very much, and with the good attendance we are going to have to use the clock, I think. Senator Robb?

Senator ROBB. Thank you, Mr. Chairman. Just one brief question which you may not be able to answer in detail right now, but more of a general answer and then if it is possible to follow up with some specifics it would be appreciated.

I am always conscious of the fact that anything we do or could do could dramatically increase the record-keeping burden, or whatever the reporting requirements are. Are there ways that these particular objectives, in terms of the accumulation of the data, could be achieved without the implementation of a whole new approach?

I do not know whether your specific bills in either case use that. A number of references have been made to other existing potential sources of information that might be utilized for this purpose.

Second, I think that Senator Murkowski alluded to the fact that his bill did not discriminate against foreign, or made no distinction. Is there a significantly increased burden if whatever information is ultimately required in the bill could be applied across the board and our computers could pick out whatever is necessary with respect to foreign ownership in this particular area?

Senator HARKIN. To answer the second part of your question, yes it is uniform for all countries.

Senator ROBB. I meant all companies, regardless of whether or not they are foreign or domestic.

Senator HARKIN. Well, it would not—no, it would not require the same information of domestic companies, but the reporting requirements that we have for foreign companies coming in are the same requirements that we now have for publicly held companies in America. The same information that publicly held companies have to divulge is included in this bill for companies that have a controlling interest.

Senator ROBB. What, then, is the distinction between what your bill would do and the status quo in that regard?

Senator HARKIN. Well, it would require them—it would require companies right now who want to invest in America, if they meet certain requirements—and I could go over that. We said a significant interest of more than 5 percent divided over $5 million, all they have to do is give their address, identity, nationality, industry, the date it was acquired, percentage, location—that kind of thing.

If it is a bigger company that is going to have a controlling interest then we would require the same information, basically, that a publicly held company has to divulge to the SEC right now.

Senator ROBB. But my question is, how does that vary from the same requirements that would be imposed on a domestic corporation? In other words, you said the same initial registration requirements. It is an academic question at this point.

Is there a way to ask all companies to provide for whatever control features that do not, in effect, discriminate against foreign ownership, and then we can make whatever utilization we desire from the information that is compiled?

But is there a way that does not single out foreign ownership for the reporting requirements that your bill would require of foreign companies, but perhaps not of domestic companies? I do not know the answer. I am just searching for it.

Senator HARKIN. I am not certain that I understand fully the question. I would just say that this bill does require reporting by privately held companies—foreign companies—that we do not require of privately held companies in this country.

Senator MURKOWSKI. Let me try and differentiate. I think there is some confusion. Under my proposal, what we are asking for specifically is that the Bureau of Census be allowed to share the information that it is gathering currently with the Bureau of Economic Analysis. In addition, it would give the improved data to CFIUS.

Now there, you are taking it up to a policymaking level and CFIUS is the designated—by the President—agency to coordinate for the benefit of policymakers but data remains confidential.

Now, I think Senator Harkin's legislation basically proposes new type reporting. I am suggesting, before we expand the reporting let us use what we have got, because currently the Census Bureau is prohibited from sharing this information.

Now, the rationale behind new reporting requirements is questionable. I would leave that to the wisdom of this Committee. Obviously much of the information is there. We have the Bureau of Economic Analysis, Census, and CFIUS. Let us use them and let us direct that they be used more effectively.

Now, the data regarding investments I do not feel should be shared with the general public, but specifically the body designated by the President to monitor foreign investment, they are the ones that should have access to the data and so I think that is another difference between our bills.

I wanted to make a point earlier, before Senator Packwood left, but on this difference that the Chairman had brought out between the power of government participation, there is a Nissan automobile plant in Kentucky that was financed by the Japan Eximbank. Japan Eximbank is a direct arm of the Japanese Government.

Now, the ability of a U.S. automobile plant to come to Kentucky and be financed by our government is not something that would happen, but it can happen when a foreign government uses its Eximbank to finance an automobile plant or anything else.

The point is, there is in effect Japanese Government ownership as opposed to just the ownership of, say, Nissan, and that is the difference and I think that is the point the Senator from Alaska is trying to stress here.

We should be able to differentiate, because they can come in under a subsidized basis, grab a portion of the market and as a consequence be much, much further ahead than our own domestic company that has to depend on conventional financial sources at conventional interest rates.

Senator ROBB. Mr. Chairman, I will yield. I still have a couple of questions but I think I can pursue those through the staff level. I appreciate Senator Harkin and Senator Murkowski's answers.

The CHAIRMAN. Thank you. Senator Ford?

Senator FORD. Let me attempt to clear up in my own mind what you two senators and Congressman Bryant are trying to do. Are you saying that, subject to the passage of either legislation, that when an overseas entity makes an offer or decides to come to the United States they would then have to reveal what they are going to do, how much their investment is going to be, where their money is coming from, et cetera?

Senator MURKOWSKI. Not under my bill.

Senator HARKIN. My bill, yes.

Senator FORD. What does either bill do, based on, say, the automotive industry? The automotive industry you know is now, I think, Geo's are all made by two or three different entities—Japan, Canada, and then a joint venture in California. Chrysler—I don't know how many hundreds of thousands of practically full automo-

bile bodies, maybe with chassis and motors and so forth, with the exception of the body—are we going to ask them to report on that?

Then we have companies from other countries that are coming in with auto parts with so-called state-of-the-art. They are going to make X parts for an American company, and then a slip of the lip finds out that the company they are going to make the parts for owns 50 percent of the company that is coming in from the other country, and so our own people are part of the problem that you are trying to solve.

So here we have a foreign entity coming in building a state-of-the-art plant that is going to be making parts for one of our major auto manufacturers, and then come to find out that the major auto manufacturer that is buying the parts from this company owns 50 percent. That sound like, to me, that they have got a good thing going.

Now, does your legislation get into any of that? If this foreign entity makes an investment, do you also reveal that the American company owns 50 percent of it? Take Northwest. Foreign investment was about—well, somewhere less than 20 percent, as I understand it, of up-front money. Now that was not—was that revealed? How do we get into all of this? Is this really going to be a blackberry pie?

Senator HARKIN. I am not certain I understand the colloquialism.

Senator FORD. I do not understand what you are trying to get to. You begin to pick up foreign investment in this company and there are so many cracks and crevices you will not be able to get to them.

Senator MURKOWSKI. Let me try and respond specifically as far as my bill is concerned. My bill—depends on current policy requirements that mandate reporting, to BEA initially, of the investment, and on Census existing surveys.

However, it would mandate that the Bureau of Census share the information with the Bureau of Economic Analysis and CFIUS so that we could at least make inquiries whether or not it was financed by the Japanese Eximbank, the Japanese taxpayer, or it was legitimately financed in the private sector of Japan. This is the type of information you would be able to share. Currently you cannot share that, Senator.

Senator FORD. Would that same information show that the percentage of American ownership——

Senator MURKOWSKI. Sure.

Senator FORD. So if it is a 50–50——

Senator MURKOWSKI. But it would not share it with the general public.

Senator FORD. But the Census Bureau would have the information that this foreign entity, apparently that was it and they solicited the location and went through all of this and you found out apparently that it was all the foreign entity and suddenly you realized that 50 percent of it is owned by an American company?

Senator MURKOWSKI. Yes. That information would be there. Census collects this info for all companies regardless of the county of the owner.

Senator FORD. That information would be there?

Senator MURKOWSKI. That is correct.

Senator HARKIN. If I might, Senator Ford. The companies you are talking about—the auto companies——

Senator FORD. I was just taking that for instance.

Senator HARKIN. Or Northwest. Those are already publicly-traded companies, and as publicly-traded companies they already have to divulge that information to our SEC.

What this bill that Congressman Bryant and I are co-sponsoring reaches is the private companies that come into this country, or maybe government investments—Kuwait and things like that—that do not have to divulge that information because they are not publicly-traded companies. But in your case, the example you used, we already have that information.

Senator FORD. Well, the auto parts would be a foreign entity coming in.

Senator HARKIN. If it was not publicly traded then they would have to—under our bill they would have to disclose certain information.

Senator FORD. Well, would that information be the percentage of information owned by an American entity?

Senator HARKIN. I guess it would, sure.

Senator FORD. Well, it is sure going to muddy up the water. There is going to be a lot of rethinking on what they are doing, because right now you do not know how much American money is invested with foreign entities that are coming into this country.

Senator HARKIN. Well, if they are publicly held we do. If they are privately held we do not, you are right.

Senator FORD. Thank you, Mr. Chairman.

The CHAIRMAN. Very good. Senator Pressler? He has gone. Let us see—Senator Danforth?

Senator DANFORTH. Thank you, Mr. Chairman. What would be done with the information once the government gets it?

Senator HARKIN. Well, it would be available to policymakers and I assume it would be available to this Committee. It would be made available to members of the Senate and the House, or to the President of the United States, in a coordinated way so that they could make good economic policy.

Senator MURKOWSKI. That is not the case in my bill. My bill specifically states that the data regarding individual investments would not be available to the general public, but the body designated by the President—or CFIUS—to monitor foreign investment would be the one that had access to the data. Of course, the Bureau of Census and the Bureau of Economic Analysis would continue to collect and coordinate it.

Senator DANFORTH. Well, what would be done with the information though, once it is available to people?

Say this Committee would have it available. So then, what do we do?

Senator HARKIN. Well, I guess what we could do is look at it and we could see whether or not—is this just a scare tactic, who owns America? Is that just a scare, or is there something really there? Is there something we might want to do here, in terms of those foreign investments? I do not know. But how do you know, when you do not even have the basic data of how much money is coming into this country?

Senator DANFORTH. But you want the data for some purpose. Why do you want it?

Senator HARKIN. Well, let me just quote this. Louis Ranieri—I do not know the individual. He is Vice Chairman of Salomon Brothers. Here is a quote from him. He is quoted in "Fortune Magazine."

> As an investment banker I am opposed to any regulations that might make it harder for me to earn money, but as a citizen of the U.S. I have to say this country's policymakers should know how much of our resources are in the hands of foreigners. I just think we ought to know how much is in the hands of foreigners.

Senator DANFORTH. You want it just for the sake of knowing it, just because it is sort of voyeurism, or do you think that—do you think that we should do something with the information? I mean, maybe the argument is that the more government knows the better, and the more information we gather, for whatever purpose, government should know what is going on in the world. But if it has policy implications, what are they? Why, conceivably, would we want to gather this information? What would we do with it?

Senator HARKIN. That is up to the policymakers. I may want to do something. You may want to do something. Others may not want to do anything. I think it depends.

If we found out, for example, that 10 percent of our domestic energy industry is owned by foreigners we probably would not care too much. But what if it was 80 percent? What if it were going up by 10 percent a year?

What if—for example, in our chemical companies right now four of the top ten are owned by foreigners that we know of, and it may be more than that. What if it is ten of ten? I mean, would we want to make some different policy adjustments in this country?

It may reflect itself on policy judgments that we would make on how we approach the deficit and what we do with our own deficit, how we address the interest rates and deposits.

Senator DANFORTH. What is your opinion as to the policy implications of that?

Senator HARKIN. I do not understand.

Senator DANFORTH. Supposing the information discloses that ten out of ten chemical companies and ten out of ten energy companies, or whatever it were, were owned by foreign interests. What would be the policy implications of knowing that?

Senator HARKIN. I would think we were going to seriously look at whether or not we want that to happen. I would hope that we might take some steps prior to that happening, to maybe preclude that possibility.

Senator DANFORTH. Do you see that gathering of information as the forerunner of governmental steps to limit foreign investment?

Senator HARKIN. Not necessarily, but that is possible. I mean, now, if you want to take the extreme position, senator, of saying that we do not care who buys America and that foreign ownership can own all of America, well I suppose there are some people that would say that that is all right.

I do not think that that is all right. I personally do not think that is in the best security interest of this country, because when foreign interests own more and more of the assets of America it makes it much more difficult for us as policymakers to make decisions based upon the best security interest of the United States, not

the best security interest of Japan or France or some other country.

Senator DANFORTH. So the reason for the gathering of information is to serve as the basis for restriction on foreign investment?

Senator HARKIN. It is to serve as the basis for protecting the national interest of the United States of America.

Senator DANFORTH. By the restricting of foreign investment, correct?

Senator HARKIN. Not necessarily. It may or may not, but it is, as I say, to protect the national security interest of America.

Senator DANFORTH. Is it your own view that foreign investment in the United States should be restricted?

Senator HARKIN. No, not necessarily. As I said in my response last year to the same question you asked, I said, all things in moderation. I am not opposed to foreign investment, but I am opposed—I am only speaking personally—I am opposed to foreign entities beginning to own so much of certain entities in the United States that have a direct bearing upon how we conduct policy in the best interest of our country. Or are we here just to rubber stamp what other countries want us to do?

Senator DANFORTH. And that government then should act to restrict foreign investment in the United States?

Senator HARKIN. That might be a policy. That might be a step that we might have to take at some point. We have taken that step, for example, in nuclear power plants. I would ask you, senator, do you think that foreign owners ought to be able to buy our nuclear power plants and own them?

Senator DANFORTH. So you feel—your view is that the reason for gathering information is to put Congress in the business of determining whether or not we want to limit foreign investment?

Senator HARKIN. Well, you can describe it any way you want to, Senator Danforth. I have explained it the way I want to, and that is to give those of us who are sworn by oath to uphold and protect and defend this country, to give us the information we need to decide just how we want to carry out that responsibility that we have.

Senator DANFORTH. Thank you, Mr. Chairman.

Senator MURKOWSKI. Could I point out that there are restrictions already in place in telecommunications, the airline industry and defense. And so it is not something that has never been tried before. I think, though, to answer your question, it is not necessarily to be read as restricting foreign investment in the United States; it can be just as easily read to use a little leverage to ensure that we are able to penetrate foreign markets.

For example, the realization that $2 billion worth of construction is done by foreign contractors in the United States and U.S. firms are doing less than $100 million in construction in Japan is something that is very handy to have when you are trying to make a point to open up a new market.

I think the point that I am trying to make here, Senator, is that there is a distinction between legitimate foreign investment in the United States that we welcome and depend on, and government-controlled foreign investment in the United States, which is something entirely different. And we damned well better make sure

that we know what it is and what it consists of, because it could affect our national security, particularly in the area of energy dependence. And we are very close to that now.

The CHAIRMAN. Senator Rockefeller.

OPENING STATEMENT BY SENATOR ROCKEFELLER

Senator ROCKEFELLER. Mr. Chairman, first, let me pay my compliments to Loretta Dunn and Sally Susman, the briefing paper that they made available to those of us on the committee is among the best that I have seen in a long time.

Second, I would just make this observation. As both of you Senators know and have heard me say before, I come from a state with one of the highest unemployment rates in the country. In 1982 and 1983, in parts of each of those years, we had 21 percent unemployment. And that was the official figure. And I always add on 2 or 3 percent more for the real figure. Real depression stuff. And it is very, very tough there still, very, very tough.

Now, we have this dilemma. I understand, Senator Harkin, what you are saying. And I think this is one of the so-called killer political issues of the 1990s, this whole question of foreign investment. It has tremendous appeal to people. It appeals to a kind of a xenophobia. Once it takes off, it is almost impossible to stop it.

On the other hand, I have got to look at my state of West Virginia, which has chemical industries that have been there for years; steel industries; metals manufacturing; coal; electronics; others, which are foreign-owned, and which have been there for a number of years—in many cases, many years.

And they are at least as corporately responsible to our state in ways which we need, as those which are owned entirely by Americans. So the concept of foreign investments being restricted troubles me.

Three days of last week I took a delegation from the Chubu region of Japan, which is around Nagoya—and Nagoya was the most bombed part of Japan during the Second World War. No city was more literally devastated. And the reason is because that is where stuff is manufactured in Japan. That is where Toyota is, that is where Mitsubishi is, that is where the basic, basic heavy industry is of the country.

And we need jobs in West Virginia. We need jobs. We need a sense of the future. We need hope. We need to be able to look forward to something. And I work as hard on people who can bring jobs to West Virginia from within this country as I do from without this country.

I share your concern about having better information, both of you. Because there are now national security matters. I think in the case of the Japanese there has been an explosion of investment that has definitely troubled our political people. And I think, to some degree, it is troubling the Japanese themselves. I think they are having some ways that they are looking at this.

And the code word, somehow, when we talk about this whole problem, we are talking about the Japanese. Others obviously are involved, but to the American mind it means the Japanese.

So I, on the one hand, as a former governor and the Senator of a state, where so many people are out of work, I want them to have work. And I want them to have work from responsible companies that will be good corporate citizens, who will stay the course and provide jobs for West Virginians.

I do not know what higher moral obligation I have, in terms of a state like West Virginia, as a public official. But I do agree that we need more information. I tend to agree more with the approach that Senator Murkowski takes, simply because if you have CFIUS with Commerce, Treasury, USTR, Defense, Justice, OMB, State, and others, having this information, that it tends to be less widespread, it tends to be probably less publicly available, but tends to be in the hands of those policymakers who need to make responsible decisions.

I also have to go to Finance, Mr. Chairman, for a hearing on catastrophic health care, and I regret that I will not hear the Commerce witness. But I would ask him, and I will in the record, the question: Why it is that they do not improve on the mechanisms which they already have, which I think is what Senator Murkowski is trying to get at.

I thank the Chair.

The CHAIRMAN. Thank you.

Senator Kasten.

Senator MURKOWSKI. If I could comment. Senator Rockefeller, your state, at 18 percent, along with my state of Alaska at 18 percent, are the states with the highest percentage of manufacturing work force employed by foreign-owned firms. So we share a common interest.

The CHAIRMAN. Senator Kasten.

Senator KASTEN. My questions have been asked primarily by Senator Danforth and Senator Packwood. And I would like to associate myself with the comments of the Senator from West Virginia, Senator Rockefeller. I think that the first effort ought to be closer to what Senator Murkowski is talking about, in terms of utilizing the data that we presently have. And I am concerned about the kind of regulatory overkill that may be the result of the Harkin legislation, as I understand it at this time.

Notwithstanding that, I think that today's hearing is very important, because we are bringing out a number of these questions, and we have the opportunity now, with the witnesses that will follow, to develop further some of the important problems that clearly are before us as we look at this foreign investment question.

Thank you, Mr. Chairman.

Senator HARKIN. Mr. Chairman, if I might just make one last response. When we become a gross debtor nation, as we have become—the largest debtor nation in the world, and when net investment now flows more into this country than out of this country, I really fear the ability of us to make decisions based upon our own national security interests.

It is like that old Golden Rule, you know, he who has the gold makes the rules. And if all these other countries have the gold and they own our assets, I wonder if we can really make decisions based upon our own best national security interests.

I have a great deal of sympathy for the people of any state that are suffering unemployment. I know what my state just went through in the last few years. But I am wondering if we should not look within ourselves, within our own country, for the resources and the wherewithal to pull ourselves out of some of the economic mess that we have gotten into.

I am reminded, which is a true story, I am reminded of an incident that happened right about the time of the Civil War. In fact, it was right towards the end of the Civil War, before Lincoln was assassinated. Some of his advisors came to him, and at that time they were making the plans to lay railroads across the United States. And his economic advisors advised Abraham Lincoln that they should buy the rails from Great Britain because they had the manufacturing capability, they could make them, they could ship them into this country much cheaper than what we could do, in terms of we would have to get the mines going, the smelters going, make the rails, manufacture them, and it would cost too much.

Abraham Lincoln thought for a moment and said, as is written in history, he said: It seems to me that if we buy the rails from Great Britain, then we have the rails and they have our money. But if we build the rails here, then we have got the rails and we have got our money.

Based upon that, we developed our own iron ore mining capability in this country, our smeltering capability and the ability to make our own steel rails for the Transcontinental Railroad. And I think that was a wise decision on our part.

So I think that perhaps we ought to start looking at our own selves.

Senator FORD. May I interrupt the distinguished Senator, since you referred to Lincoln, who was born in my state. Lincoln also said, "When progress is made, somebody gets hurt."

Senator HARKIN. That is true. I just do not want it to be Americans. I would rather have our country look to ourselves.

Second and last, and I do not think this is a red herring; I think this is something that is going on right now. There is a lot of drug trafficking money being invested in assets in America, and we do not know the extent of it because they hide behind the cloak of anonymity.

And one of the primary reasons that I am so hot about this piece of legislation is that right now they are going to have to step forward and say who they are and where they are getting the money and where they are from. And I think that will put a great chilling effect upon the drug traffickers, who are right now investing and buying assets in America.

Thank you.

The CHAIRMAN. Senator, I do not know that I would go as far as to say we ought to pass a bill, because all of the British or Japanese or West Germany investment is drug investment. It could be some of it, but like you say, we do not know. I think what we really have is two different things that the Committee is concerned with. That is, legislating on an informed basis, in a timely manner.

Senator Danforth asked, "What are we going to do?" I think if we had watched the semiconductor computer chip manufacturers a little bit more closely we would not have had to come along in a

tardy fashion with $100 million last year and $100 million this year for Sematech.

We probably could have moved to giving our computer manufacturers a fairer chance to compete, on the one hand. And of course the whole Congress is organized on the basis of information. I mean, we have got the committees, we have got the hearings and everything else; here comes a group that says, "Why do you want to know? What are you going to do with the information? 'I sort of resist that particular approach.

Otherwise, I think we want to look at the volume, the influence. I will never forget, I almost make a hobby of studying the Japanese, because I admire them; I am not bashing them. They are my competition and they are beating me. They are richer than you and me 40 years after World War II.

And they went into Michigan, I saw this six years ago, they put up a line of credit of several hundred million dollars right in the New York financial markets so that Michigan could act as if had a AAA credit rating. That is the banks.

I think if a singular American bank would have done that, they would have come down all over them. I can tell you that right now. And they financed the robots production. I knew Giddings & Lewis, Cincinnati Milicron made better robots, but at that automobile factory in Detroit it was Japanese because, as you say, if you got the gold or got the money, money talks.

Otherwise, look at Hawaii and the investment there and the influence. Or look at Tennessee. If I had 91 Japanese plants in the State of South Carolina, as they have in the State of Tennessee, I think it would have a marked influence on my vote. I know textiles does, because that is a large industry. It is a normal, expected thing.

So what we are really trying to do is find out—we cannot maintain as an industrial power unless we can manufacture glass, rubber, steel, all the other elements of security, but more than anything else, we cannot be a free government while we are going to watch the others buy it all up, and then we just rejoin, what are we going to do with it? Probably nothing right now, but we can watch the trends and act in a timely fashion.

Senator Murkowski, you had something to say.

Senator MURKOWSKI. Just one thing. I want to reassure you, Mr. Chairman and members of the Committee, that it is not my intent in proposing this legislation to restrict foreign investment in the United States. I feel, as I have pointed out, that we need to coordinate existing data and try to better distinguish foreign investment from foreign government investment. For reasons that I have already expressed; by allowing the sharing the information census collects with Bureau of Economic Analysis, and the sharing of BEA data with CFIUS.

Our ultimate goal is reciprocal investment opportunities for U.S. investors, and the bottom line is to use the leverage that the United States has to do this. And that leverage is the access to our open markets. And it is a business principle that is used in the private sector all the time. And it is simply to remind those that have access to our markets that they must open their markets to us as well.

And that is hardball in a sense, but I notice some of your witnesses here, T. Boone Pickens particularly, I think is going to have an extraordinary story to tell you about trying to play by the rules and finding out that there are exceptions to the rules; that the rules are not set up to accommodate, indeed, the participation of American investment in foreign manufacturing as well.

So these are the kind of things. And from this hearing, I think our friends can get the message that this is a two-way street. And we want to keep our markets open, but we simply want the same opportunities.

The CHAIRMAN. Well, the modern day father of free trade, Cordell Hull—reciprocal free trade, reciprocity, that is all we are asking for.

The Committee is indebted to you both. Thank you very much.

We will call now Dr. Michael Darby, the Under Secretary of Economic Affairs, Department of Commerce.

We welcome you, Dr. Darby. We can include your statement in its entirety. We will do that in the record, and you can give it as you wish, or summarize it, highlight it, whichever you prefer.

STATEMENT OF MICHAEL DARBY, UNDER SECRETARY OF ECONOMIC AFFAIRS, DEPARTMENT OF COMMERCE

Dr. DARBY. I would be delighted to summarize.

Good morning, Mr. Chairman, members of the Committee.

I appreciate the opportunity to testify on foreign direct investment.

My prepared statement summarizes current reporting requirements, discusses the economic impact of foreign investment, and details government monitoring procedures for foreign direct investment.

In my oral statement I will discuss the proposals before this committee to change data collection and monitoring procedures.

Today this committee is considering two bills which would change current investment data collection, S. 289 and S. 856. Mr. Chairman, S. 289 mandates registration and disclosure of foreign investment in the United States. This administration has consistently opposed this bill and its counterpart, H.R. 5. In fact, on February 16th, 1989, seven members of the Cabinet recommended that the President veto any foreign registration disclosure legislation, such as H.R. 5.

This bill would produce little or no useful information not already collected and available for statistical or analytical purposes. For example, contrary to prior testimony, the BEA does collect data on ultimate beneficial owner, except in the rare case of individual owners who report their country of residence.

However, by allowing access to the identity of foreign investors, it would discriminate against them and discourage foreign investment in the United States Enactment would ultimately increase the cost of capital in the United States and result in slower economic growth, weaker productivity performance, lower rates of employment, and American products which are less competitive in world markets.

In addition, this proposal would also damage our statistical system, which is based upon anonymity of reporters. We are concerned that by divulging information on individuals under this one proposal, we will subsequently have greater difficulty collecting data that we need for both government and private use.

Furthermore, public disclosure may lead to strategic behavior on the part of respondents in that they may distort answers or provide less than full answers if they believe the information may be used against them.

S. 856, Senator Murkowski's bill, would permit sharing of data within the Economic Affairs Under Secretariat (that is, between BEA and Census) and permit BEA to divulge individual data to CFIUS. With respect to the sharing of data with CFIUS, the Administration is strongly opposed.

Protecting the confidentiality of data becomes extremely difficult the more widely the data are disseminated. Furthermore, data collected by BEA are used for statistical and analytical purposes only. Under the Exon-Florio provision of the Omnibus Trade Act, CFIUS has been delegated functions that are regulatory in nature.

Providing data collected for statistical purposes to CFIUS would set precedents that would further erode the integrity of our statistical system and affect a wide range of statistical series.

On the section of Senator Murkowski's bill which allows list sharing between BEA and Census, we are supportive of its intent, but have some concerns about the best method for technical implementation.

Briefly, Census collects detailed data by establishment, while BEA's data is collected at the enterprise level. By linking the two data systems, it would be possible to integrate Census' highly-detailed data by industry and state into the BEA data. This link would enable Commerce, eventually, to provide data at a more disaggregated level, while still protecting the confidentiality of respondents.

It would, I believe, address many of the concerns expressed by Members of Congress. We look forward to working with the members of this committee to address some of the technical reservations which we have about the bill as presently drafted. Specifically, we would like to find a way to allow sharing of data without amending section 9 of title XIII. This section, which protects the confidentiality of business respondents, has no exceptions.

To avoid encouragement of additional proposals to amend section 9, we would prefer to treat this sharing of data as a special case by addition of a separate section dealing with this limited set of data to be used for a very specific purpose.

Mr. Chairman, we share the objective of Senator Murkowski and others of publishing more disaggregated data at the state and industrial level, and are prepared to work with you in achieving this goal. We remain strongly opposed to S. 289, because it would have a chilling effect on foreign investment in the United States, because it would invite retaliation against U.S. companies which have substantially greater investment abroad, and because it would weaken our case for the free flow of investment in various multilateral negotiations.

Finally, it would damage substantially the integrity of the U.S. statistical system.

Thank you, Mr. Chairman. I am prepared to respond to any question the Committee may have.

[The statement follows:]

STATEMENT OF MICHAEL R. DARBY UNDER SECRETARY FOR ECONOMIC AFFAIRS U.S. DEPARTMENT OF COMMERCE

Mr. Chairman, I appreciate the opportunity to testify today on foreign direct investment in the United States. I would like to summarize current reporting requirements and recent trends in foreign investment, and discuss the economic impact foreign investment has on the United States. I will also discuss U.S. government monitoring procedures for foreign direct investment and proposals to change data collection and monitoring procedures.

CURRENT REPORTING REQUIREMENTS

Data on foreign direct investment in the U.S. are collected by the Commerce Department's Bureau of Economic Analysis. The purpose of BEA's data collection system for foreign direct investment in the United States is to provide comprehensive and reliable information needed to monitor, assess the impact of, and develop informed U.S. policy on such investment. This purpose is set forth in the International Investment and Trade in Services Survey Act, which authorizes collection of the data.

BEA's data provide a wealth of information on foreign direct investment. They give a detailed picture of the levels, growth, origin, and regional and industrial distribution of the investment. In terms of the quantity, quality, variety, and timeliness of the aggregate statistics it produces, the BEA data system is unmatched by that of any other country in the world.

Under authority of the International Investment and Trade in Services Survey Act, BEA conducts a number of mandatory surveys of U.S. affiliates of foreign companies. A U.S. affiliate is defined as a U.S. business enterprise in which a foreign person owns or controls, directly or indirectly, at least 10 percent of the voting securities (or the equivalent interest in an unincorporated business enterprise).

The foundation of the reporting system is the Benchmark Survey of Foreign Direct Investment in the United States. The benchmark survey is the most comprehensive survey conducted on foreign direct investment in the United States. It collects both balance of payments and financial and operating data in considerable detail. The balance of payments data cover positions and transactions between U.S. affiliates and their foreign parents. The financial and operating data cover the overall operations of the U.S. affiliates. To minimize the reporting burden, an exemption level of $1 million has been established, below which an affiliate need not report. This level is set to assure that coverage in value terms is virtually complete—roughly 98–99 percent—while burden on businesses is minimized. Results of the benchmark surveys are usually highlighted in an article in the Survey of Current Business, with more detailed data published in a separate volume.

BEA has just completed processing the preliminary results of its latest benchmark survey, covering 1987. The results were processed in 13 months from the filing due date, one half the time it took to process the last (1980) benchmark survey. This reflects the Department's continuing commitment to improve the timeliness of its data on foreign direct investment. The preliminary 1987 data were released on June 27, 1989. Additional highlights and analysis will be presented in the July issue of the Survey of Current Business, and more detailed data will be available in a separate publication in August.

The balance of payments data are updated by means of a quarterly sample survey. Overall, the sample covers 93–95 percent of the universe in terms of value. Estimates based on the sample data are published as part of the U.S. balance of payments accounts in the March, June, September, and December issues of the *Survey of Current Business.* More detailed results are published in the August issue.

Selected financial and operating data on U.S. affiliates are updated in nonbenchmark years by means of an annual sample survey. Overall coverage is 95–97 percent, and universe estimates are derived by extrapolating forward the universe data from the benchmark survey based on sample data from the annual survey. Results are published approximately 1 year after the due date for completed reports. Highlights are published in the *Survey of Current Business,* usually in May; more de-

tailed data are published in separate publications for each year, first on a preliminary, and then a year later on a revised basis.

In addition, U.S. businesses newly acquired or established by foreign direct investors are required to file a questionnaire which gives BEA the necessary information to continually add new firms to its universe. This questionnaire obtains identification information on the new U.S. affiliate and on its foreign parent and ultimate beneficial owner, the cost of the acquisition or establishment, and selected data (assets, sales, net income, land owned, and employment) for the new U.S. affiliate. The form must be filed within 45 days of the date of acquisition or establishment by new U.S. affiliates with assets greater than $1 million, or that own 200 or more acres of U.S. land. The results of this survey are published annually, usually in the May issue of the Survey of Current Business.

RECENT TRENDS IN FOREIGN DIRECT INVESTMENT IN THE UNITED STATES

At the end of 1988, the foreign direct investment (FDI) position in the United States was $329 billion. More than one-third of the total was in manufacturing ($121 billion). 20 percent was in wholesale and retail trade ($65 billion), and about 10 percent was in each of petroleum ($35 billion) and real estate ($32 billion). Countries with the largest positions were the United Kingdom ($102 billion), Japan ($53 billion), the Netherlands ($49 billion), Canada ($27 billion), and West Germany ($24 billion).

The investment position is the net book value of all the foreign capital that has come into the United States over the years of direct investment. Direct investment is a relatively small part of the $1.8 trillion of total foreign investment in the United States, which also includes foreign ownership of U.S. Treasury securities, corporate stocks and bonds, and deposits in U.S. banks.

FDI has grown rapidly in recent years, but from a very small base. It was less than $35 billion at the end of 1977 and grew at an average annual rate of 23 percent through the end of last year, to $329 billion. In contrast, U.S. direct investment (USDI) aboard grew from a much larger base ($146 billion at the end of 1977) at an average annual rate of just 8 percent over the same time period, and reached $327 billion at end of 1988. Thus, by the end of last year, the reported position for FDI in the United States slightly exceeded that for USDI abroad. In the first quarter of 1989, FDI in the United States continued to grow at a more rapid pace than USDI abroad.

I want to pause here to comment briefly on a measurement issue that recently has been the subject of discussion. As I noted, the direct investment positions are measured at book value; thus, they reflect prices at the time the investments were made rather than some current, or market value of the investments.

Book value is, of course, the accepted standard used in company accounting here and abroad, and is the only basis generally available to companies that report direct investment positions and transactions to BEA. Because changes in book value mirror current transactions, changes in the positions, as published, have been providing a clear picture of the recent strength of FDI in the United States relative to USDI abroad.

Nevertheless, for many kinds of analyses, measures stated in current value are needed. Several recent studies have attempted to estimate the current value of the direct investment positions. These rough estimates generally confirm the long-held notion that, because it is more mature, USDI abroad is probably undervalued to a greater degree, relative to current value, than FDI in the United States. Thus, although the positions measured at book value were nearly the same size at the end of 1988 ($327 billion for USDI abroad and $329 billion for FDI in the United States) it is likely that, if measured at current value, the USDI position abroad would be significantly larger than the FDI position in the United States.

These studies have raised useful questions about the need for current value measures of the current investment positions. Further work on the conceptual framework will help to more clearly define the measure needed. The feasibility of actually developing a new measure—using indirect methods in combination with what limited information exists on current values—will require and deserve careful study and review.

Income payments on FDI in the United States were $17 billion in 1988, up over 75 percent from 1977. Of the total, $7 billion was reinvested in U.S. affiliates and $10 billion was remitted to foreign owners in the form of dividends or interest. Although they decreased in 1988, income receipts on USDI abroad, at $48 billion, were still almost three times larger than direct investment income payments. Of the total, $15

billion was reinvested in foreign affiliates and $33 billion was remitted to U.S. owners in the form of dividends and interest.

Thus, both in terms of total income on direct investment, and in terms of the amounts remitted to owners, U.S. receipts on direct investment abroad continue to be much larger than payments on direct investment in the United States.

The reported rate of return (calculated as direct investment income over the average position for the year) is much lower for FDI in the United States (6 percent) than for USDI abroad (15 percent). The difference in the rates reflects not only real differences in return, if any, but also the likelihood, noted previously, that the position for USDI abroad is probably understated to a substantially greater degree relative to current value than the position for FDI in the United States.

As noted earlier, BEA also collects a wide variety of data on the overall operations of nonbank U.S. affiliates. Based on recently released preliminary results of BEA's 1987 benchmark survey of FDI in the United States, U.S. affiliates employed 3.2 million workers in 1987. In terms of employment, the United Kingdom and Canada were the largest investors.

Affiliate employment was concentrated in manufacturing (1.5 million) and retail trade (0.6 million); by State, it was largest in California (324,000), New York (300,000), and Texas (208,000).

Total assets of U.S. affilitates were $926 billion at the end of 1987, and their sales for the year were $731 billion. Japan ranked first in both measures. (In 1986, Japan had ranked third in total assets, behind the United Kingdom and Canada, and first in sales.) Japan's ranking for assets and sales was higher than its ranking for employment (fourth) because a large portion of the assets of Japanese-owned affiliates was in finance and a large portion of their sales was in wholesale trade. Assets tends to be particularly high in finance, and sales particularly high in wholesale trade, relative to employment in those industries.

The gross book value of affiliates' property, plant, and equipment was $346 billion. Of the total, $125 billion was used for manufacturing and $91 billion for commercial property. Nearly one-half of the affiliates' commercial property was in three States—California, New York, and Texas.

U.S. affiliates had merchandise exports of $48 billion, and merchandise imports of $141 billion, in 1987.

Despite recent strong growth in foreign direct investment, the foreign-owned share of the U.S. economy remains small. For example, the 3.2 million employees of U.S. affiliates represent only 3.6 percent of all U.S. business employment in 1987. In industries where FDI is concentrated, employment shares of affiliates are larger than in the economy as a whole. for example, U.S. affiliates accounted for over 7 percent of total U.S. manufacturing employment. Based on total assets, U.S. affiliates accounted for 13 percent of the U.S. manufacturing total. According to both measures, the shares for industries within manufacturing are highest for chemicals, petroleum and coal products, stone, clay, and glass products, and primary metals.

RESTRICTIONS ON DISCLOSURE

Under the International Investment and Trade in Service Survey Act, the data from BEA surveys are confidential. No one with access to the data may publish them or make them available to the public in a manner that would specifically identify the company furnishing the information or tha would disclose the data of an individual company. The penalty for willful disclosure is a $10,000 fine.

FOREIGN INVESTMENT AND NATIONAL SECURITY

As you are aware, the Exon-Florio provision of the Omnibus Trade and Competitiveness Act of 1988 empowers the President to investigate to determine the effects on national security of mergers, acquisitions, and takeovers of U.S. companies by foreign interests. The President may block or suspend a transaction if (a) there is credible evidence that the foreign interest might take action that threatens national security and (b) other provisions of law do not provide adequate and appropriate authority to protect the national security.

The President delegated to the Committee on Foreign Investment in the United States (CFIUS) his power to investigate. Since last August, CFIUS has received notifications of about 70 transactions. Two have gone to the President for decision following a full investigation. The President decided against intervening in the two cases which reached him.

CFIUS is diligent in carrying out the spirit and letter of Exon-Florio, in a manner consistent with our open investment policy. Each transaction is carefully considered by the eight members of CFIUS (Treasury as chair, State, Defense, Justice, Com-

merce, USTR, OMB, and CEA) and by other agencies as appropriate. Consequently a decision to investigate or not is arrived at only after the transaction has been considered from a number of national security perspectives.

The Department of Commerce's International Trade Administration collects information on individual foreign direct investments from public sources and refers to CFIUS transactions that may have major implications for U.S. national interests.

In addition, there are restrictions on foreign investment in key sectors, such as atomic energy, shipping, air transportation and communications. Furthermore, foreign as well as domestic investors must comply with the antitrust laws, export control laws, the Industrial Security Program, the Defense Production Act, and the Arms Export Control Act. Finally, the International Trade Administration annually publishes information—obtained from public sources—on the identity of foreign investors by industry.

THE BENEFITS OF AN OPEN INVESTMENT POLICY

International direct investment plays a vital role in expanding the world economy. To ensure its maximum contribution to both global and domestic economic well-being, the Administration and most economists believe that international direct investment flows should reflect private market forces and should receive non-discriminatory treatment. In such an environment, investment will move toward its greatest return, providing the greatest benefit to the world's economies.

Investment is important to every economy including and, in some respects, especially to the U.S. economy today. Its importance to our economy does not depend on whether the investment is foreign or domestic. Investment in our economy has two important effects. It adds to capacity, and it helps modernize our industrial base and raise productivity. At this stage of our expansion, the longest on record during peacetime, the operating rate is approximately at 84 percent of capacity. In strong business cycle peaks, it typically rises to 88 or 89 percent of capacity. Continued investment will add to capacity which will give our economy additional room to grow. At the same time, by modernizing our industrial base, investment makes us more competitive in world markets.

In promoting economic growth, investment contributes to the growth in our real incomes and to growth in our standard of living. This is a principal objective of our economic policy.

Other industrial countries generally have invested a larger share of their GNP in new plant and equipment than we have. As a result, U.S. productivity growth, until the last few years, has been one of the slowest among all the major industrial countries. Since 1985 we have been doing better because we have accelerated capital spending in our economy. But we still need to promote more investment in our economy, whether by American or foreign companies.

Throughout the post-war period, our government has reiterated to our trading partners that investment in their economies by U.S. companies is good for them. And it has been. It helped to rebuild their economies, then contributed to their growing output, jobs and standards of living.

Our investment policy is unambiguous. The United States welcomes foreign direct investment. The United States accords foreign investors the same fair, equitable, and non-discriminatory treatment it believes all governments should accord foreign direct investment under international law.

The United States opposes government intervention that impedes or distorts investment flows or attempts to shift artificially the benefits of these flows. These measures include trade-related or other performance requirements, fiscal or financial incentives, and discriminatory treatment of foreign investment.

We are actively pursuing initiatives in the OECD and GATT aimed at reducing or removing any foreign government practices that impede or distort trade or investment flows. Our goal is to develop an international system, based on national treatment and most-favored-nation principles, that permits investment flows to respond freely to market forces.

PROPOSALS TO CHANGE FOREIGN INVESTMENT DATA COLLECTION

Today, this committee is considering two bills which would change current investment data collection—S. 289, "The Foreign Ownership Disclosure Act of 1989," and S. 856, which amends Title 13 and the International Investment and Trade in Services Survey Act.

Mr. Chairman, S. 289 mandates registration and disclosure of foreign investment in the United States. This Administration has consistently opposed this bill and its counterpart, H.R. 5. In fact, on February 16, 1989, seven members of the Cabinet

recommended that the President veto any foreign registration and disclosure legislation, such as H.R. 5.

This bill would produce little or no useful information not already collected and available for statistical or analytical purposes. However, by allowing access by many different groups to the identity of foreign investors, it would discriminate against them, and discourage foreign investment in the U.S. Enactment of this proposal would ultimately increase the cost of capital in the U.S., and result in slower economic growth, weaker productivity performance, lower rates of employment, and American products which are less competitive in world markets.

In addition to the serious consequences which this proposal would have on U.S. investment, it would also damage our statistical system. Our statistical system is based on the anonymity of reporters. We do not disclose the individual identities of, or data for, people or firms who respond to survey questionnaires distributed and collected by either the BEA or the Census Bureau. We are concerned that by divulging information on individuals under this one proposal, we will subsequently have greater difficulty collecting data that we need for both government and private use. Furthermore, public disclosure may lead to strategic behavior on the part of respondents—in that they may distort answers or provide less than full answers if they believe the information may be used against them.

S. 856, Senator Murkowski's bill, would permit sharing of data within the Economic Affairs Under Secretariat (between BEA and Census), and permit BEA to divulge individual data to CFIUS.

With respect to the sharing of data with CFIUS, the Administration is strongly opposed. Protecting the confidentiality of data becomes extremely difficult the more widely the data are disseminated. Furthermore, data collected by BEA are used for statistical and analytical purposes only. Under the Exon-Florio provision of the Omnibus Trade Act, CFIUS has been delegated functions that are regulatory in nature. Providing data collected for statistical purposes to CFIUS would set precedents that would further erode the integrity of our statistical system, and affect a wide range of statistical series.

On the section of Senator Murkowski's bill which allows list sharing between BEA and Census, we are supportive of its intent, but have some concerns about the best method for technical implementation of the proposal. Briefly, the Census Bureau collects detailed data by establishment, while BEA's data is collected at the enterprise level. By linking the two data systems, it would be possible to integrate Census' highly detailed data by industry and State into the BEA data.

This link would enable the Department of Commerce eventually to provide data at a more disaggregated level while still protecting the confidentiality of respondents. It would, I believe, address many of the concerns expressed by Members of Congress.

We look forward to working with the members of this Committee to address some of the technical reservations which we have about the bill as presently drafted. Specifically, we would like to find a way to allow sharing of data without amending Section 9 of Title 13. This section, which protects the confidentiality of business respondents, has no exceptions. To avoid encouragement of additional proposals to amend Section 9, we would prefer to treat this sharing of data as a special case, by the addition of a separate section dealing with this limited set of data to be used for a very specific purpose.

Mr. Chairman, we share the objective of Senator Murkowski and others of publishing more disaggregated data at the State and industry level, and are prepared to work with you in achieving this goal. We remain strongly opposed to S. 289 because it would have a chilling effect on foreign investment in the U.S., because it would invite retaliation against U.S. companies which have substantially greater investment abroad, and because it would weaken our case for the free flow of investment in various multilateral negotiations. Finally, it would damage substantially the integrity of the U.S. statistical system.

Thank you, Mr. Chairman. I am prepared to respond to any questions the Committee may have.

[The following information was subsequently received for the record:]

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QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

1. Dr. Darby, it has been reported at various times that Japanese investors finance 25 - 50% of our budget deficit. I have also read of several occasions when large Japanese investors were not buying U.S. government securities so that the interest rates had to be raised. Do you see any potential problems in this development?

A. According to Treasury Department data, as of April 1989 Japan held only 3.6 percent of the total outstanding U.S. Government debt (including trust funds and Federal Reserve holdings, but excluding Government agency debt). From the close of 1987 to the close of 1988, the Japanese holdings of the debt rose by $27.9 billion, to $86.6 billion. This increase is equal to almost 20 percent of the 1988 calendar year budget deficit.

Japanese participation in the financing of the federal budget deficit does not raise any special concerns. The interest rates on Treasury securities are determined in a market that consists of numerous participants. In the years 1986-87, when Japanese participation in the Treasury security market was much smaller than in earlier years, net foreign purchases by all foreign investors held up well.

The breadth and depth of the U.S. Treasury market is such that no single entity can set a price over time. The total amount of outstanding long- and short-term Treasury securities is close to $3 trillion; average daily trading among primary securities dealers totals over $100 billion. The market is world-wide, highly liquid, and able to handle large trading volumes with relatively limited effects on prices.

2. Many editorialists and academics say that foreign direct investment is good because the foreign parent company transfers its technology to its U.S. affiliate. Do you believe the Japanese and other foreign investors in U.S. high-tech companies are looking to transfer technology to the U.S.?

A. Many foreign firms, including Japanese firms, have transferred technology to the United States by means of direct investment in U.S. affiliates. Technology transfer has played a critical role in enabling foreign-owned U.S. plants to overcome the disadvantages they otherwise might face because of distance from their home offices, language differences, cultural differences, or lack of detailed knowledge about how business is conducted in this country.

Business considerations are the major determinants of the specific operations a multinational firm conducts at its various sites. Economies of scale or ready access to research facilities at the home office may limit a foreign firm's international transfer of technology. Nevertheless, Japanese auto and electronics affiliates in the United States are making highly advanced products with the use of their most advanced techniques.

As Norman J. Glickman and Douglas P. Woodward note in The New Competitors, many Japanese corporations have excelled through innovations in production as well as in product development. Especially notable have been the Japanese "quality circles," extensive use of robotics, "just-in-time" production methods, "total quality control," and other innovations that have "improved, rationalized, and sped up factory production." Innovations such as these have been incorporated in the operations of Japanese affiliates in the United States and have been emulated by many U.S. firms.

3. Today, four of the ten largest U.S. chemical companies have foreign owners, perhaps as many as 50% of U.S. workers in the cement industry work for foreign-owned companies and only two large tire manufacturers remain U.S. owned -- is this part of a natural progression to a more internationalized economy or should we be concerned?

A. Because of their underlying strengths, or their perceptions of inefficiencies in the U.S. market, foreign firms have become major participants in a number of U.S. industries. For example, German chemical firms have long been major producers in this country and throughout the world as a result of their strong product base. Further, in this decade, strong foreign cement firms have purchased a number of U.S. cement companies and in the process have greatly increased competition in the U.S. market.

The growth in foreign ownership of U.S. companies should not alarm us. This growth reflects increasing internationalization of the world economy as firms throughout the world seek to exploit their competitive strengths in various national markets. The U.S. economy benefits from the growth in foreign production here since it improves our technological base and makes our economy more responsive to customer needs.

Growth in foreign direct investment in the United States reflects other factors as well. Most important of these has been the attractiveness of the U.S. investment climate owing in part to favorable tax rules (especially in the 1981-86 period), an improved regulatory picture, and the shift to a non-inflationary monetary policy regime. Foreign direct investment in this country has also been spurred by the relaxation or removal of capital controls in other countries--e.g., Japan, Britain, and France.

4. Does the Commerce Department have any information as to whether foreign automobile greenfield plants are leading to import substitution or are they simply capturing market share from the Big Three?

A. Data supplied by Ward's Automotive Reports on Japanese imports and production by U.S. affiliates of Japanese firms indicate that the output of foreign-owned greenfield plants is substituting for imports in some cases.

The answer to the question varies by producer and model. Honda, for example, has tended to shift production of its lower-priced models to the U.S., while importing higher margin cars from Japan. Imports of Honda Civics declined from nearly 87,000 units in 1987 to about 46,000 in 1988; during the first six months of this year, Honda imported only 7,000 Civics, compared with nearly 37,000 in the same period last year. In contrast, U.S. greenfield production of the Accord is down while imports are up.

5. Last year foreigners invested more here than we did abroad and our payments on investment almost equalled our receipts from investments. Does this concern you? Does the Commerce Department have any projections as to when payments to foreigners will exceed receipts and what that ledger will look like, say, in 5 years?

A. It is likely that payments of income on total foreign assets, direct and portfolio, in the United States will exceed receipts of income on total U.S. assets abroad for the full year 1989. They did so in the first quarter of 1989, and in two quarters of 1988. This should not be a serious concern because, as long as they remain a small portion of growing national income, net foreign payments can be accommodated along with a steady rise in U.S. living standards.

Although the Department makes no official estimates stretching out five years, two recent papers suggest net income payments of about $30 billion in 1992-93. (The projection for 1993 is from Stekler and Helkie, International Finance Discussion Paper No. 358, Board of Governors of the Federal Reserve System, July 1989, and that for 1992 is from Eisner and Pieper, "The World's Greatest Debtor Nation?," a paper delivered at a meeting of the American Economic Association, December 30, 1988.)

6. It is often said that growing investment here is the mirror image of our enormous current account deficits in the 1980's. If this is true, then our lack of a tough, coherent strategic trade policy and increasing penetration of our market by imports have not only hurt U.S. workers and companies but actually have contributed to the change in their ownership. Could you comment?

A. I cannot agree that the nation lacks a tough and coherent trade policy. In the GATT and in bilateral negotiations with our major trading partners, the Administration has moved aggressively and consistently to lower foreign barriers to U.S. exports and to ensure that competitiveness issues are fully considered in national security decisions. I am pleased to say that the Commerce Department has played an important role in both of these areas.

The Committee's question seems to assume that imports are bad for U.S. workers and firms. In effect, the question asks us to ignore the facts--to consider imports apart from exports. In fact, importing and exporting go together; most advanced industrial economies do a lot of both. The free movement of goods, services, and capital across national boundaries creates opportunities for accelerated growth.

The question also seems to assume that the trade deficit is a cause of foreign direct investment in the United States. In fact, the opposite is true. Persistent U.S. trade deficits in the 1980's stem from a shortfall of domestic saving relative to domestic investment. In the first half of the decade especially, the resulting inflow of foreign investment strengthened the dollar and generated a growing trade gap. The most powerful solution to the trade problem is to increase domestic saving. The President's economic program aims directly at that result.

7. Do you believe data collected by BEA might be more useful if information were available on specific critical sectors like biotechnology, aerospace, and auto parts?

A. Yes. As I stated in my testimony, it would be desirable if more detailed information by industry were available for foreign direct investment in the United States.

BEA's data on U.S. affiliates are collected on a fully consolidated domestic (U.S.) business enterprise basis. This is done for a number of reasons. Much of the data collected by BEA--e.g., those on financial statements and on transactions with foreign parents--are usefully interpreted, and may be available, only at the enterprise level. Consolidation eliminates double-counting of financial assets and liabilities within an enterprise that results from intra-firm transactions. Consolidated reporting also helps limit the reporting burden on the U.S. business community, as required under the Paperwork Reduction Act.

BEA asks each consolidated U.S. business enterprise to report its sales and employment, disaggregated by BEA's international surveys industry (ISI) classification codes. These codes are roughly equivalent to three-digit Standard Industrial Classification codes. Using the data on sales, BEA classifies each affiliate by primary industry, based on the ISI code in which the affiliate's sales are largest.

Much more detailed codes than BEA now uses are not appropriate for classifying consolidated enterprises. Many such enterprises are diverse and engaged in a variety of industries. The more detailed the classification system, the less meaningful is classifying all of the enterprise's data in a single industry.

BEA can, however, use the data on sales and employment disaggregated by ISI code to provide some detail for U.S. affiliates below the consolidated level. It publishes tables on sales and employment of affiliates disaggregated "by industry of sales." On this basis, an affiliate's sales, and the associated employment, in secondary industries are shown in those industries rather than all of the data being shown only in the affiliate's primary industry.

A better way to obtain more disaggregated data by industry would be to link BEA's direct investment enterprise data with data for the establishments of those enterprises, which are already collected by the Census Bureau. This would enable Census' highly detailed data by industry and State to be published for BEA's direct investment enterprises, without imposing additional and duplicative reporting requirements on the business community. As I noted in my testimony, Senator Murkowski's Bill (S.856) is a step in the right direction but we have some technical reservations about the bill as presently drafted. We are prepared to work with the Congress to resolve these problems.

8. Do you believe the Department could collect better information on real estate transactions, such as real estate partnerships, a very popular way to buy real estate?

A. BEA currently collects information on foreign direct investment in U.S. real estate. It does not, however, collect data on foreign ownership of residential property held exclusively for personal use rather than for profit making purposes, or on foreign participation in real estate limited partnerships. Both of these types of investment are, under present rules and regulations, not considered direct investment.

Limited partners do not have voting rights in a partnership and, therefore, cannot have direct investment in the partnership; their investment is instead considered to be portfolio investment. The Treasury Department is responsible for the collection of data on portfolio investment. Treasury is now considering including collection of data on limited partnerships in its upcoming benchmark survey of foreign portfolio investment in the United States, which will cover 1989.

To our knowledge, no data on foreign investment in residential real estate for personal use are collected by the Federal Government. The feasibility of collecting data in this area is questionable. The burden on respondents and cost of collection are likely to be very great.

9. Do you have any idea why 78% of the people surveyed last year by the consulting firm of Smick-Medley favored limiting foreign investment?

A. It is hard to explain the perceptions and preferences of a survey group without knowing how the sample was constructed, how questions were phrased and presented, or even how the term "foreign investment" was defined.

Efforts to restrict foreign investment in U.S. assets are at odds with sound theoretic and practical considerations that have guided this Nation's economic policies since World War II. When governments prevent the free movement of investment toward its greatest return, economies are less productive and standards of living are a little lower than they could be. We are all a little poorer.

Moreover, until Americans are willing to increase domestic saving, we will need foreign investment to keep the economy on a healthy growth path.

Our country has long argued that U.S. investments overseas benefit the economies of host countries as well as our own. And we have been right. U.S. investment helped rebuild foreign economies after 1945, and foreign affiliates of U.S. corporations are major contributors to those economies today. The fact that foreigners are now investing here in large amounts does not suddenly mean that our approach to foreign investment for the last 45 years has been a mistake. Moreover, U.S. receipts on direct investment abroad continue to be much larger than U.S. payments on foreign direct investment here--both in terms of total income and amounts remitted to owners.

At a time when economic integration in Europe and elsewhere is opening up exciting new opportunities, and also competition for U.S. industries, a shift away from our long-standing support for open capital markets could have harmful repercussions--not only for the United States, but for the world.

10. Many critics of the legislation introduced last year by Congressman Bryant and Senator Harkin have argued that disclosure would "chill" foreign investment--are you aware of any chilling effect produced by the Agricultural Foreign Investment Disclosure Act of 1978?

A. According to the Department of Agriculture, it is difficult to point to any chilling effect produced by the Agricultural Foreign Investment Disclosure Act of 1978. Moreover, such an effect seems unlikely. The main reason for this is that provisions of the Act prevent USDA from tracing ownership of a newly purchased tract of farmland beyond the third tier. A foreign investor intent on masking his identity, therefore, could readily do so and still be in compliance with the law.

11. Has the Commerce Department ever undertaken a study to determine the current value of U.S. investments abroad--I have heard figures from $400 billion to $1 trillion?

A. As I noted in my testimony, we are aware of several recent studies that have attempted to estimate the current value of U.S. direct investment abroad (as well as the current value of foreign direct investment in the United States). While the estimation techniques used were rough and results varied over a wide range, each of the studies concluded that, because it is more mature, U.S. direct investment abroad is more undervalued relative to current value than foreign direct investment in the United States.

The Department is considering the questions raised by these studies. More work on the conceptual framework is needed to help define what additional measures may be needed. The feasibility of actually developing a new measure will require careful study and review.

12. Critics of legislation in this area point to another benefit of foreign investment--money poured into upgrading and modernizing plant and equipment. Yet in the view of many economists, this has not happened; capital investment has remained at its historic level of 17-18% of GNP. Aren't the investments of the 1980's very different from the investments of the late 19th century -- money which went to build railroads, canals, roads and other productive investments rather than money to allow me to buy a second Japanese VCR?

A. U.S. private capital investment has remained stable at around 17-18 percent of GNP. In the absence of the inflow of foreign funds, it would have fallen. Some econometricians have estimated that, had the net inflow of foreign funds been prevented in recent years, real interest rates in the United States would have been 3 to 4 percentage points higher than they were, and investment correspondingly lower.

Furthermore, U.S. investment broadly defined is considerably larger than indicated by the conventional National Income and Product (GNP) Accounts. One example of an investment that is not included in the NIPA accounts as investment is government spending on long-lived assets. In the official accounts, such government investments are treated as if they were consumed currently. Yet government spending on schools, public buildings, highways, and equipment is essentially investment -- not consumption. A particularly important category of government investment in recent years has been that associated with the build-up of our national defense capabilities which is playing a part in improving prospects for a more peaceful and prosperous world.

As in the 19th century, foreigners are putting their money into a broad spectrum of U.S. investments. They are building new greenfield plants, buying existing firms, lending money to and buying stock in other existing firms, and lending to governments. As in the 19th Century, Americans have grown wealthier in the 1980s partly because capital flowed into the United States from the rest of the world.

13. Fred Bergsten of the Institute for International Economics has estimated that we need to run a trade surplus as high as $50 billion a year in the 1990's to service our foreign debt. Do you agree? How will we get there from here ($125 billion deficit) to there?

A. Mr. Bergsten's position is questionable.

-- He does not make clear the distinction between debt and equity in the Net International Investment Position (NIIP), a substantial portion of which is not debt but equity. Equity holdings are "serviced" out of profits; if there are no profits, there is no "servicing."

-- Valuation of our official NIIP, is a mixtue of market and book values, though, in principle, it would be desirable to value it at current market prices. There has been some preliminary work toward this end by several economists who have tried to estimate the NIIP valued to market. One such study found the market-valued NIIP at roughly zero at the end of 1988, an estimate which is consistent with the rough balance in the investment-earnings component of the U.S. current account. Despite a negative official NIIP of more than $500 billion, our net investment earnings in 1988 were positive at $2.2 billion.

-- Further, there is nothing inherently unsustainable about a U.S. current-account deficit. It is the mirror image of the domestic saving/investment gap. As long as America's investment climate gives us a share of world investment which is disproportionate to our internal saving, we will experience a net inflow of foreign capital and corresponding current-account deficit. We certainly do not want to make the United States a less attractive place to invest, for it is through investment that new technologies are introduced and new products and services are provided. It is investment that increases our ability to produce. So far in this decade, we have become almost 20 percent wealthier in real terms -- not only directly because of our own saving but also indirectly because of our increased productivity which is attributable in some part to investment that foreigners have made in the United States. However, so that we can narrow the investment/saving gap without reducing the level of investment which is so vital to America's competitiveness, the Bush administration aims to promote national saving through such means as restraining government spending.

14. In your opinion, do the employment benefits of foreign investment match the cost of state incentive packages?

A. In our federal system, states are free to formulate and follow their own economic development plans. I think it would be out of place for a federal official to second guess the values, objectives, and cost-benefit assessments reflected in these plans.

This issue is not only, or even mainly, a question of incentives to foreigners. It relates to all potential investors from out-of-state and, indeed, to firms that seek encouragements from state governments to sustain existing operations.

In theory, locational incentives--like local restraints on investment--may make the overall economy less efficient. They may divert investment flows from their most productive destinations. In practice, of course, states continue to compete aggressively for outside investment--especially "greenfield" investment--as a source of primary and secondary employment, population growth and tax revenue. The value that states place on these benefits are matters for state officials, voters, and taxpayers to decide.

15. Has the Department thought about a method to get better data on the financing of foreign direct investment, specifically how much of the financing represents a capital inflow?

A. BEA already collects the necessary information on the financing of foreign direct investment.

In its annual and benchmark surveys since 1977, BEA has collected data on the financing of U.S. affiliates' overall operations with internal- and external-source funds. Internal sources of funds include reinvested earnings (net income less distributed profits) and charges against income for depreciation and depletion; external sources include debt and equity investment from U.S. and foreign sources.

The data for 1985-87 indicate that about 30 percent of the overall operations of nonbank U.S. affiliates was financed with foreign-source funds, virtually all from the foreign parent and foreign affiliates of the foreign parent. These data are heavily weighted by a few U.S. affiliates in nonbank finance, which, as a normal part of their business, have large financing requirements that are satisfied almost entirely by U.S.-source funds. If a rough adjustment is made to exclude these affiliates from the data, foreign-source funds financed 40-45 percent, rather than 30 percent, of the overall operations of U.S. affiliates in 1985-87.

Beginning in 1988, BEA added a question to its new investment survey on the portion of total outlays to acquire or establish new U.S. affiliates that were financed with foreign-source funds. Because the question was new, the response was poor and the reported data were not of publishable quality. BEA is taking steps to improve the quality of the data and plans to publish results in the future.

In the meantime, for large 1988 transactions, a comparison between total outlays reported on BEA's new investment survey and capital inflows reported on its quarterly direct investment survey indicates that roughly one-half of total outlays for new investments are financed with foreign funds.

16. Does it concern you that the identification required by BEA does not, in many cases, get at the ultimate beneficial owner (UBO)?

A. It is not true that "in many cases" BEA fails to identify the ultimate beneficial owner (UBO) of a U.S. affiliate. The UBO is defined as that person, proceeding up the ownership chain of the U.S. affiliate, beginning with and including the foreign parent, that is not owned or controlled more than 50 percent by another person. BEA obtains the name and country of each UBO so defined, except in the case in which the UBO is an individual person rather than a company. In that case, and only in that case, BEA obtains the country but not the name of the UBO.

Obtaining the name of a UBO that is an individual is often difficult--both because of the possible sensitivity of the information to the individual involved and the fact that a U.S. affiliate may itself not know the name. Because BEA's confidentiality requirements preclude publishing the names of UBO's, BEA does not require the name in such cases.

BEA normally accepts the name and nationality of the UBO that is reported by the U.S. affiliate unless it has reason to believe that the reported information is incorrect. If, for example, an outside source indicates a name or nationality different from the one reported, BEA will investigate. If a reporter changes its UBO from one report to the next, BEA will investigate and verify which is the correct one. Also, there are certain countries of convenience, such as Panama, the Netherlands Antilles, and the Cayman Islands, that are not accepted by BEA as the country of UBO without further verification through contact with the respondent. It should be noted that BEA will pursue the identity of the UBO through as many tiers of ownership as necessary. Much effort is spent by the staff on verifying the reported information on UBO's.

BEA annually publishes data on the operations of foreign-owned U.S. affiliates in each individual country of UBO, and also by country of UBO at a somewhat more aggregated level cross-classified by industry of affiliate or, for selected items, by state. These data provide a full picture of the ultimate sourcing of foreign direct investment in the United States.

17. How does BEA verify the accuracy of its data? How do you know whether or not your methodology is sound?

A. All report forms filed with BEA are closely scrutinized to ensure the accuracy and consistency of the reported data. The data are first subjected to an extensive computerized edit program that checks for such things as rounding errors and internal consistency between different parts of the same form. Data for a given affiliate are compared with prior year's data for that affiliate, with data for the current year reported by the same affiliate in related BEA surveys, with data of other affiliates in the same industry, and with publicly available information such as annual reports or, for the few affiliates that are publicly traded, information reported to the Securities and Exchange Commission (SEC). In addition, aggregated data for U.S. affiliates are compared with comparable data for all U.S. companies from outside sources to ensure that they are consistent. The aggregated data may also be compared with information from other government agencies, such as the Department of Agriculture and the International Trade Administration of Commerce, on foreign direct investment as well as with general statistics on the U.S. and international economies. All of these comparisons are made to check the reasonableness of the reported data and to determine whether more information from the reporter is necessary.

When reported data are incomplete or when questions about the accuracy of a given report arise, BEA contacts the company by phone or letter to verify the reported information, obtain missing information, or request revised data. Much staff time is spent in this effort.

To ensure that its mailing list of survey respondents is complete and accurate, BEA compares and supplements its list with information from public sources, such as newspapers, trade journals, trade associations, and public lists of companies (e.g., Moody's). It also utilizes lists compiled by state development agencies, foreign embassies, and other U.S. Government agencies, such as ITA and, for publicly held companies, the SEC.

18. In your testimony, you oppose sharing BEA data with CFIUS members because of confidentiality concerns. Do you think any member-agency of CFIUS, such as Department of Defense or the Securities and Exchange Commission, is less trustworthy than the Department of Commerce in their ability to respect confidential material?

A. I don't believe it is a question of one agency being less trustworthy than another. It is simply that there are greater chances that an inadvertent release of information will occur the more widely that information is disseminated.

A more substantive concern is whether CFIUS, absent BEA data, has access to sufficient information to enable it to carry out the responsibilities delegated to it by the President. I believe that it does. As is made clear in the proposed regulation implementing the Exon-Florio provision, published in the Federal Register on July 14, 1989 (54 Fed. Reg. 29744-29755), CFIUS has the authority to receive answers to a broad array of questions in order that it may review and, where appropriate, investigate a particular transaction. Because it has access to this information on a case-by-case, as-needed basis, CFIUS does not need access to confidential BEA information.

19. The Exon-Florio provision of the Omnibus Trade Act is not regulatory. In the legislative history you will note that the role played by CFIUS is an analytical one--to examine foreign acquisitions and analyze their national security implications for the President. Can you explain how allowing CFIUS to look at BEA data for analytical purposes will "erode the integrity" of your statistical system?

A: Although the role of CFIUS under the Exon-Florio provision of the Omnibus Trade Act may not be regulatory in the strictest sense, it is investigatory. The President has delegated to CFIUS authority to conduct investigations of the effects on national security of investment transactions for which CFIUS receives notice. On completion of an investigation, CFIUS sends a report and recommendation to the President, who may decide to prohibit or suspend a particular transaction. Clearly, CFIUS' role is not solely analytical and statistical, as required for access to BEA's individual company data under the International Investment and Trade Survey Act.

As I noted in my testimony, our statistical system is based on the anonymity of reporters. Divulging individual company information to agencies that have regulatory or investigatory functions--or as part of a process that may result in regulation--may make subsequent collection of data needed for both government and private use more difficult. The risk of public disclosure, slight as it is, may lead to strategic behavior on the part of respondents in that they may provide incomplete or very limited and, therefore, less useful data if they believe the information may be used against them.

Response to Rockefeller's Question

Q: I share your concern about restricting foreign investment and the possible negative affects of the Bryant/Harkin proposal. I believe, however, that the information that policy makers have available on foreign investment is not sufficient for them to make educated and intelligent decisions. That is why I support Senator Murkowski's proposal for the sharing of data between the Bureau of Economic Analysis and the Census Bureau within the Department of Commerce and the provision of additional information to CFIUS. What I do not understand, frankly, is why the Executive Branch is not making a greater effort to improve the data collection process and the coordination of the data within the government. We are told that we collect enough information, but we are also told that it is not put together anywhere in a usable place. Why are you not making greater efforts to improve the use of the data that you are currently collecting? Why don't you come back to us with proposals if it would require changes in existing law? We would like to see some initiative on your part in this area?

A. I am working quite closely with the Chairman of the Council of Economic Advisers, Michael Boskin, to develop an agenda to assure the quality of economic statistics. The effort is at the direction of the Economic Policy Council. The Working Group under Mr. Boskin's direction will report to the Council shortly with a set of recommendations for its consideration. This effort is a part of the President's commitment to sound statistics tangibly embodied in his budget submission to the Congress for FY 1990. There, as you know, a substantial set of statistical programs were to be exempted from the flexible freeze, including the decennial Census and a series of improvements in economic statistics.

At Commerce, I am leading an initiative to accomplish what Senator Murkowski's data sharing initiative intends. I, too, am committed to the sharing of information for statistical and analytic purposes only, with appropriate confidentiality safeguards, between Census and BEA to improve their statistics. I believe that it is not necessary at this time to augment CFIUS activities. In brief, we at Commerce are fully behind the President's budget, policy, and programmatic efforts to assure the highest quality economic statistics for use in policy development, implementation, and execution.

The CHAIRMAN. How do you mean damage the integrity? Are you saying if you require folks to provide this information, all these folks will start lying?

Dr. DARBY. Well, I have noticed in my experience that the people who report generally have some idea of what they are reporting. For example, right now we are very concerned, in terms of the decennial census, with letting people know that they will not be harmed by INS, IRS and the police, if they respond to the census form. Because we want them to come forward.

And we have seen, in economic data, that——

The CHAIRMAN. Well, the IRS and all of these others, they are only looking for crime. Are you worried today? I am not worried. I am not worried about the IRS or the INS. I mean, they have just legitimate law enforcement responsibilities.

I do not understand your testimony when you say this would discourage foreign investment, and would ultimately increase the cost of capital. That seems to be an affirmative action plan by the Administration to have the foreigners finance our debt, and we will never get the government back into the black.

But right to the point, in your Department of Commerce, in the Omnibus Trade Bill, you said in filing on a dumping violation, that in order to prove the cost of production and I have got to provide my proprietary information. That is why, in dumping cases, America's industry is not filing a case.

I mean, there is an old adage that no matter how well the gun is aimed, if the recoil is going to kill the gun crew, you do not fire it. So if I go over and file my dumping case, then I have to provide my proprietary information. And I have given to my competitor the most valuable of information, so I do not even file for a dumping case. But you make that available to counsel your Department does.

The proprietary information, even the makeup of my manufacturing process is known to counsel.

Now we have got all of those kind of requirements, and they have not made America's manufacturers crooked. What you are saying in your testimony is that if we start asking and receiving this particular information, we are going to destroy the integrity. Where is the integrity there now? I mean, that is what I am constantly hearing up here in Washington, "destabilized." There is nothing stabilized to begin with.

Integrity-wise, at the moment, what are you disturbed about? Where is the integrity in the system right now if you do not have a system?

Dr. DARBY. Sir, we do have a system. And I would distinguish clearly between regulatory information and proceedings of a regulatory or judicial nature, in which proprietary information may become public, and information provided on the basis of anonymity to the statistical system which is provided exclusively for statistical and analytical purposes, and which cannot be divulged in such proceedings as you are referring to.

We believe that divulging the information to CFIUS would be an example of divulging, in a regulatory procedure, information collected under different rules.

The CHAIRMAN. Well, I will get into Senator Danforth's shoes. What good is that information now?

Dr. DARBY. The statistical and analytical information?

The CHAIRMAN. Yes. Why am I paying your salary over there? What am I getting out of you?

Dr. DARBY. Well, we have extensive reports, which people have——

The CHAIRMAN. What do they do with it? There is nothing to do with it. I think maybe you have testified for the abolition of your office over there in the Department of Commerce. I mean, there is nothing to be done with it according to your testimony.

Dr. DARBY. Well, sir, I think in the aggregate, the information is useful. We do report it and publish it in the aggregate basis so that policymakers——

The CHAIRMAN. And what has happened as a result of that?

Dr. DARBY. I think that we have seen legislation, for example, last year, in response partially to issues that have been raised by the data published. I think that, in terms of our international negotiations, the aggregate data are very useful.

And we are proposing to work with the Committee to give finer data, so that indeed we would know, by industry, foreign ownership, which might be useful in negotiations. But not the particular proprietary information about particular owners. That is the distinction that we think is important.

The CHAIRMAN. Very good, Dr. Darby. You and I just differ. I do not think it is good for negotiations, they use it against us in the negotiations; we have not used anything to help our negotiations. But I will not argue that point.

Senator Robb.

Senator ROBB. Mr. Chairman, I think I understand Dr. Darby's position in this particular matter. I will pass on this round.

The CHAIRMAN. Senator Ford.

Senator FORD. Well, I will have to disagree with my distinguished colleagues. I do not understand a damned word of it, Mr. Darby.

Dr. DARBY. Which one?

Senator FORD. Well, the whole thing.

Let me just ask you one question here. On page 5 of your statement you said, "Recent trends in foreign direct investment in the United States. More than one-third of the total is in manufacturing, $121 billion." What countries?

Dr. DARBY. The data by country is published in the May 1988 Survey of Current Business, as I recall. I do not have that information with me, but I would be happy to supply it for the record.

Senator FORD. I would like to have that.

And then, of course, for the wholesale/retail trade of $65 billion, you would not have that, either?

Dr. DARBY. That's correct, but I would be happy to supply it.

Senator FORD. All right.

[The information referred to follows:]

Table 1.--Foreign Direct Investment Position in the United States at Yearend
[Millions of dollars]

	1987									1988								
	All industries	Petroleum	Manufacturing	Trade	Banking	Finance, except banking	Insurance	Real estate	Other industries	All industries	Petroleum	Manufacturing	Trade	Banking	Finance, except banking	Insurance	Real estate	Other industries
All countries	271,780	35,596	94,745	50,009	14,655	3,820	17,392	27,516	28,245	328,850	34,704	121,434	64,929	17,653	2,124	20,252	31,929	36,024
Canada	24,013	1,435	7,636	3,626	1,354	484	2,500	4,617	2,683	27,361	1,614	9,391	3,513	1,450	600	2,993	4,169	3,634
Europe	186,976	32,867	73,981	27,926	6,719	3,403	13,673	10,379	14,999	216,418	31,536	91,932	36,799	9,099	2,417	15,812	10,532	18,309
European Communities (12)	165,627	32,604	62,900	24,803	6,587	4,227	11,764	9,850	13,192	193,912	31,169	79,525	32,896	8,804	1,745	13,535	10,016	16,229
Belgium	2,638	(D)	701	412	32	(D)	0	13	(D)	4,824	(D)	980	695	36	66	(4)	82	(D)
France	10,119	(D)	8,567	656	648	-661	126	57	(D)	11,364	(D)	9,906	520	687	-764	130	95	(D)
Germany, Federal Republic of	20,315	148	9,294	6,170	367	849	1,630	1,143	914	23,845	172	13,268	6,951	283	-635	1,776	1,979	1,834
Italy	1,707	(D)	245	482	438	30	(D)	(D)	(D)	667	(D)	107	515	946	(D)	(D)	(D)	(D)
Luxembourg	133	(D)	58	(D)	6	-16	9	16	2	525	(D)	346	(D)	12	15	0	16	66
Netherlands	49,115	(D)	16,137	4,065	2,518	2,586	3,061	3,311	(D)	48,991	(D)	17,153	5,153	2,725	3,190	4,685	3,340	(D)
United Kingdom	79,669	(D)	27,961	12,480	2,822	(D)	6,106	5,140	7,969	101,905	12,779	37,821	18,647	3,649	870	6,863	5,323	10,727
Other EC	1,732	(D)	347	(D)	666	(D)	(D)	(D)	(D)	2,587	(D)	733	(D)	935	(D)	(D)	(D)	(D)
Other Europe	20,849	263	11,580	3,123	132	1,176	1,908	530	1,007	22,505	367	12,407	3,911	296	671	2,277	517	2,109
Sweden	4,953	251	3,133	1,211	(D)	-167	(D)	7	(D)	5,253	295	3,618	1,492	(D)	(D)	(5)	13	(D)
Switzerland	14,646	280	7,996	1,672	(D)	1,216	1,618	301	(D)	15,896	92	8,972	2,283	(D)	1,411	1,935	368	(D)
Other	1,010	-119	451	241	62	127	(D)	131	(D)	1,347	-120	717	246	101	(D)	(D)	136	72
Japan	35,151	-2	5,345	15,678	3,513	1,115	(D)	6,000	(D)	53,354	-79	12,222	18,736	3,895	2,863	(D)	10,017	(D)
Australia, New Zealand, and South Africa	6,152	55	3,040	280	23	-23	(D)	329	(D)	9,614	287	2,279	419	11	-636	(D)	416	(D)
Latin America and Other Western Hemisphere	12,671	748	3,556	2,252	1,007	-4,164	931	4,002	3,729	17,019	850	4,221	3,934	1,942	-3,100	1,150	5,217	2,766
South and Central America	4,294	243	664	281	1,705	52	(D)	284	(D)	4,978	446	686	326	1,845	47	(D)	338	(D)
Panama	2,319	(D)	542	174	(D)	41	(D)	151	16	2,747	6	501	890	(D)	66	(D)	246	77
Other	2,975	(D)	-58	107	(D)	11	(D)	134	(D)	2,232	440	-95	116	(D)	1	(D)	122	(D)
Other Western Hemisphere	8,377	505	3,892	1,981	102	-4,216	(D)	4,518	(D)	12,040	452	3,815	3,608	97	-3,154	(D)	4,878	(D)
Bermuda	1,712	238	256	(D)	0	(D)	(D)	250	(D)	1,680	107	328	(D)	(4)	(D)	-113	242	98
Netherlands Antilles	5,317	150	2,345	1,118	(D)	215	(D)	2,688	1,764	10,591	264	3,110	2,864	83	153	(D)	3,150	(D)
U.K. Islands, Caribbean	-3,146	(D)	648	161	(D)	-4,800	(D)	889	(D)	-1,164	(D)	355	280	14	-3,650	1	1,364	(D)
Other	396	(D)	19	(D)	(4)	(D)	0	171	(D)	873	(D)	13	(D)	(4)	(D)	2	92	47
Middle East	4,960	(D)	353	79	610	197	0	890	(D)	5,831	(D)	281	510	657	216	0	823	(D)
Israel	516	0	(D)	(D)	494	(D)	0	1	-0	619	0	(D)	(D)	433	(D)	0	1	-9
Other	4,444	(D)	(D)	(D)	116	(D)	0	888	(D)	5,212	(D)	(D)	(D)	224	(D)	0	822	(D)
Other Africa, Asia, and Pacific	2,528	(D)	914	230	264	-168	10	611	(D)	3,243	(D)	1,160	700	198	-35	0	655	(D)
Addendum--OPEC/1/	4,897	(D)	101	149	356	9	0	827	(D)	6,221	745	571	(D)	363	26	0	879	(D)

3 Less than $500,000 (+/-).
D Suppressed to avoid disclosure of data of individual companies.
1. OPEC is the Organization of Petroleum Exporting Countries. Its members are Algeria, Ecuador, Gabon, Indonesia, Iran, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, the United Arab Emirates.

Senator FORD. Countries with the largest positions were the U.K., $102 billion. Is that all just last year?

Dr. DARBY. No, sir. That is the aggregate at book value.

Senator FORD. Aggregate at book value. Over what period of time to get to the $1.8 trillion?

Dr. DARBY. Supposedly over the existence of the country. That is, we have benchmark surveys that come every five years, and then we, moving forward, add additional investments since the benchmark.

Senator FORD. Well, when did you start to compile the $329 billion?

Dr. DARBY. The last benchmark survey was 1987, and we published preliminary results on that.

Senator FORD. So in 1987 through 1988 there was $329 billion additional?

Dr. DARBY. No, sir. That is the total.

Senator FORD. From where?

Dr. DARBY. From the beginning of the country. We took data on the total value at book value.

Senator FORD. All right. Then what happened to the $1.8 trillion, if that started from the time of the beginning, you have got about 600 or 700.

Dr. DARBY. This is direct investment, which is to be distinguished from portfolio investment in stocks and bonds, where it is a small ownership position.

Senator FORD. So it is roughly then $1.4 trillion that is in Treasury securities, corporate stocks and bonds, and deposits in U.S. banks?

Dr. DARBY. I believe that is the major categories; yes, sir.

Senator FORD. So that would be $1.4 trillion?

Dr. DARBY. Yes, sir.

Senator FORD. All right. Now, of the $329 billion, that is all that has been invested over the last 200 years in the United States. When did it start to accelerate?

Dr. DARBY. Well, from colonial times through the first 100 years of the country, we were basically financed by foreign investment. Then, around the beginning of this century. as memory serves, through 1914, that was reversed. Through the early 1980s, we had——

Senator FORD. It was about 1983, was it not?

Dr. DARBY. Well, sir, part of the problem is that this is book value. It was in the early 1980s that the book value accelerated. We have the U.S. investments largely in place, and we are measuring them at book value, so at least whenever we start comparing foreign and domestic values, that can be possibly misleading, if not confusing.

Senator FORD. I am like Harry Truman, give me a one-arm economist; on the one hand, and stay with it.

Now, if my addition and subtraction is correct, you listed about $255 billion in manufacturing, wholesale and retail trade, petroleum and real estate. That leaves a balance of $74 billion. Can you tell me just off the top of your head who would be investing this $74 billion?

Dr. DARBY. Do you mean in what industry is it invested?

Senator FORD. Yes. And what countries have invested?

Dr. DARBY. Not off the top of my head. We have extensive tables prepared by the BEA, which I would be happy to supply for the record.

Senator FORD. Can you just give me an eighth-grade report on $74 billion: X country invested $2 billion in petroleum, Y country invested a certain amount in industry, another country invested so much in real estated. Can we just do that rather than have all these comparison tables for the last 200 years?

Dr. DARBY. I am afraid we have not done them for the last 200 years. We do have 1988 and 1987. I can give you ideas on, say, if I can find the right table—I think I have to supply it for the record,[1] sir.

Senator FORD. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator DANFORTH.

Senator DANFORTH. Mr. Secretary, I thought Senator Murkowski made a good point when he said that it is helpful when negotiating with other countries to know the relative positions of the two countries with respect to foreign investments.

In other words, say that Japan will not let us invest in a certain area, however they invest heavily here. It is good to know that for the purpose of negotiations.

Our policy has been to further open investments. That has always been, as far as I know, our negotiating objectives in international negotiations. It was also the point that was made in the trade legislation that we passed last year.

What kinds of information are necessary to allow us to negotiate successfully? Do we have that information now? And is there a difference between that kind of information and what Senator Harkin would ask for? Is there a difference between that kind of information and the sort of thing that Senator Murkowski wants in his legislation?

Dr. DARBY. Well, I think we collect, in basically two places, certainly all the information we would need for negotiations. I think that Senator Murkowski has a valid point that because we have establishment-level data collected in the Census, which is for individual plants, and we have enterprise data collected in the BEA, and they have the primary reporting responsibilities, that there is some interesting information that might be useful if we could go down to the plant level with information on foreign ownership.

And Senator Murkowski, I think, has made a good attempt, and, with technical modifications, we could provide all that data we are already collecting to our negotiators in a more useful form.

I do not see the purpose of collecting individual transactions data or individual firm data on the private firms as being of beneficial value to our negotiators.

Senator DANFORTH. Do you think that we should, in legislation, address the question of what our negotiators are getting? Should we be making improvements? Should our position be that we do not need any legislation whatever? Or should our position be that

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[1] See table 1 p. 81.

if our objective is to try to open up the markets of other countries, there is some additional information that could be helpful?

Dr. DARBY. I think the seemingly small technical correction proposed by one section of the Murkowski bill, the part allowing BEA and Census to share information, would be useful for those purposes. The CFIUS provision I think would be very dangerous to the statistical system as a whole. So I distinguish those two sections.

Senator DANFORTH. Is this the Administration's position, that they would support that one provision of the Murkowski legislation?

Dr. DARBY. In principle. We do not have exact language, but I am authorized to work with the Committee on the exact language.

Senator DANFORTH. Is that also the view of USTR?

Dr. DARBY. I believe they were involved in clearing my testimony, sir.

Senator DANFORTH. Do you know whether or not they think this would be helpful in negotiations?

Dr. DARBY. I do not.

Senator DANFORTH. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Kasten.

Senator KASTEN. Let me just get a clarification. You are saying that you support the one part of the Murkowski bill, but are ambivalent about the other, or are strongly opposed to the other?

Dr. DARBY. No, we are strongly opposed to sharing the information with CFIUS. And that is opposed, as a matter of fact, I guess, by the departments that would be receiving it within the CFIUS.

Senator KASTEN. Thank you, Mr. Chairman.

The CHAIRMAN. Very good, Mr. Secretary. The Committee appreciates your appearance here today. And we will leave the record open for any questions by other members.

Dr. DARBY. Thank you.

The CHAIRMAN. The next group will be panel number one, Mr. T. Boone Pickens and Mr. Jerry Jasinowski.

Mr. T. Boone Pickens is the Chairman of Boone Company in Amarillo, Texas; and Mr. Jerry Jasinowski, Executive Vice President and Chief Economist for the National Association of Manufacturers.

The Committee welcomes you both.

Mr. Jasinowski, will you go first?

STATEMENT OF JERRY JASINOWSKI, EXECUTIVE VICE PRESIDENT AND CHIEF ECONOMIST, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. JASINOWSKI. Thank you, Mr. Chairman.

I am pleased to be here and testify on this issue that is extremely important to member companies and all international companies. It is very important for international trade and investment policy negotiations, and important in terms of the overall economic situation in the United States.

The CHAIRMAN. We will include your statement in its entirety in the record, and you can highlight or give it as you wish.

Mr. JASINOWSKI. I will highlight it, Mr. Chairman.

The CHAIRMAN. Very good.

Mr. JASINOWSKI. Let me begin by saying that you are looking at two bills. First, the Bryant-Harkin bill, which represents a comprehensive foreign ownership disclosure approach. It is an amended version of the foreign investment disclosure provision that Congress rejected last year, as you know, as a part of the Trade Act.

We supported the Trade Bill, but opposed vigorously [this provision], at the time. In common with other business groups, we continue to strongly oppose the amended Bryant-Harkin bill. I will indicate why in a moment.

On the other hand, Senator Murkowski has adopted a different approach in his bill, S.856. Instead of requiring far-reaching changes in reporting, as in the Bryant-Harkin bill, S.856 identifies some problems and addresses them by amending the existing International Investment and Trade and Services Survey Act.

We are not prepared to support this legislation now. But we do believe it represents an appropriate type of legislation that should be considered at this time with respect to reporting on foreign investment.

Mr. Chairman, let me summarize four major points as to why we oppose the Bryant-Harkin approach to direct foreign investment, and why we tend to lean more toward Senator Murkowski's approach.

The first, is that there is not any clear need demonstrated for major, radical new reporting requirements on foreign investment. This country has a very advanced and detailed system, with respect to the reporting of inward investment. As we say in the testimony, this has been confirmed by the Director of the U.N. Center on Transnational Corporations.

In addition, if you look around from our point of view, we believe that the existing federal reporting captures the major trends. The Committee was talking earlier about aggregate trends; we have all that information and we know what the basic trends are. The issue really comes down more to company-level specifics.

So we do not see that there is a crying need for expanding the existing reporting requirement, which is already quite extensive.

And with CFIUS in place, we have a targeted approach to gathering additional information on foreign investment that covers national security and a range of other important national concerns. To suggest that there is some crisis because we have no information or inadequate information we think, is incorrect.

Secondly, we believe that under the Bryant amendment there would be a high probability of disclosure of proprietary information, which would be very damaging to the confidentiality of firms, their competitive position and, in general, violate the standards for confidentiality on business organizations worldwide.

If you look at the amended Bryant-Harkin bill, you see that there are now limits on disclosure. But the limits I would suggest, Mr. Chairman, are not very strict. You have consultants who still can obtain the specific company information. All states could set up their own system for utilizing this information which would likely lead to disclosure. The bill also includes "Persons performing qualified research under procedures established by the Secretary of Commerce, by rule or regulation"—a term that is extremely ex-

tremely vague, I do not see where there are appropriate limits within the Bryant-Harkin bill which would adequately protect the disclosure of confidential information.

My third point is that if we move forward with radical, comprehensive, major restrictions on direct foreign investment, we will be doing so at a time which ignores the possibility that such restrictions would justify an increase on the part of foreign restrictions; just at a time when we are likely to make major progress with respect to reducing the restrictions that foreigners now place on investment.

To make my point, let me summarize, as we do in the testimony on page 9, three major initiatives that are aimed at liberalizing trade and investment regimes around the world.

The first is a major thrust in the GATT negotiations with respect to trying to reduce international investment restrictions.

Secondly, and I think terribly important with respect to Japan, is that we now have in place a new structural impediments initiative, which was added to the Bush administration's Super 301 actions aimed at Japan. And this structural initiative specifically names controls and prohibitions on U.S. direct investment in Japan: both de jure and de facto investment controls in Japan have been used to keep United States goods and United States companies out of the Japanese market, especially by preventing acquisition of Japanese companies with their existing distribution networks.

And, as a major initiative, the administration is now focusing on that as a part of the continuation of the 301 decision.

Finally, the OECD has a 1990 review of investment codes. And that is moving forward. So all three of these are areas where we could impede further progress internationally on reducing investment barriers by moving forward with something like Bryant-Harkin.

Let me now make my last point, the fourth point, Mr. Chairman. As I have listened to the committee this morning, I have been struck by the extent to which there is this dilemma about whether or not foreign investment is good for the United States or not.

My own thinking on this is direct inward investment is a better approach than many of the alternatives—particularly simply paying for our large current account and trade deficits with long-term loans whereby we are paying increasing amounts of interest for this very large international debt that we have.

In my testimony I indicate that we have since the 1980s swung about $670 billion toward a debtor position of about in the 1980s. Of that amount there has been a net change in direct foreign investment of $127 billion in the U.S. over our investment abroad, plus a net increase of $198 billion in foreign private holdings of nongovernmental portfolios, and securities.

The increase in foreign net investment in equity from foreign countries in the United States is paying for roughly half of our current international debt.

Having said that it is better than some alternatives, let me underline that it is not the best alternative. The best alternative is to reduce our trade deficit and our current account deficit by reducing the budget deficit and all the things that you, Mr. Chairman, and

the other members of the committee know are important for improving our competitive position.

But, in no case are the important things that we have to do to improve our competitive position really strengthened by radical restrictions on foreign investment. I would submit that to some extent the people who are asking for more information of a radical nature are doing so because they do not want to acknowledge that. They want to restrict foreign investment.

Thank you, Mr. Chairman.

[The statement and questions and answers follow:]

TESTIMONY ON
THE FEDERAL COLLECTION OF INFORMATION ON
FOREIGN INVESTMENT IN THE UNITED STATES

BY
JERRY J. JASINOWSKI
ON BEHALF OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS

BEFORE THE
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
UNITED STATES SENATE

JULY 11, 1989

Mr. Chairman, members of the committee, I am Jerry Jasinowski, executive vice president and chief economist of the National Association of Manufacturers. I appreciate this opportunity to testify today on an issue that has become extremely important to our member companies, as well as to the economic future of our country.

This hearing is examining legislation related to the reporting of foreign direct investment in the United States. Previous congressional witnesses today discussed two bills: (1) The Bryant-Harkin bill represents a comprehensive foreign ownership disclosure approach. It is an amended version of the foreign investment disclosure provision that Congress rejected last year as part of the Trade Act. NAM supported the final Trade Act passed by Congress, but strongly opposed this provision. In common with other major business organizations, we continue to oppose the amended Bryant-Harkin bill.

(2) Senator Murkowski has adopted a different approach in his bill, S. 856. Instead of requiring far-reaching changes in reporting as in the Bryant-Harkin bill, S. 856 identifies some problems and addresses them by amending the existing International Investment and Trade in Services Survey Act (henceforth Investment Survey Act). I am not yet prepared to endorse S. 856 on behalf of NAM. But we believe that it represents an appropriate type of legislation that should be considered at this time with respect to reporting on foreign investment.

Today, the United States certainly has the most advanced and detailed system in the world of public reporting on inward foreign direct investment. This has been confirmed by the Director of the UN Center on Transnational Corporations. We believe that existing federal reporting captures major trends accurately and in a timely manner. Therefore, we oppose any wholesale or radical changes in the collection and reporting of data. But we are willing to work with Congress and the new Administration in reviewing the adequacy of present data in all respects, and to work with this committee in particular with respect to issues such as those raised in S. 856.

I would also like to address in this testimony the more general question of restricting or channeling foreign investment, as has been suggested by a number of commentators. NAM opposes general efforts to restrict foreign capital inflows for economic reasons. We believe instead that U.S. policy should aim for the early elimination of the federal budget deficit, and the reduction of the trade deficit through U.S. export growth and implementation of U.S. trade laws. Foreign direct investment in the United States in the

1980s has been in part a natural response to the sharp increase in these deficits, although we believe that foreign companies would have sought to increase their investments in the United States in the 1980s in any case, because of market opportunities here.

The major qualification to our support of unrestricted investment inflow lies in the area of national security. NAM last year supported Senator Exon's amendment reported by this committee and subsequently added to the Trade Act. We believe that this provision gave the President full and adequate legislative authority to review mergers, acquisitions and takeovers involving foreign firms in the United States when such transactions have direct national security implications, and to alter or deny such proposed transactions.

Now I would like to discuss our views on the proposed legislation and foreign investment in a little more detail.

NAM Opposes the Bryant-Harkin Bill

The Bryant-Harkin bill would require the special registration by foreign persons of any acquisition of a "significant" interest in a U.S. property, or of a controlling interest in a U.S. business enterprise. It discriminates against foreign investors, since it would require foreign persons and companies in many cases to disclose a wide range of important and propriety business information that U.S. companies in like circumstances are not required to provide or disclose. The U.S. business community and the U.S. government have opposed discriminatory reporting requirements and investment policies in other countries, because

they are frequently used to hamper both trade and the efficient management of international business enterprises. We believe, therefore, that passage of this bill is not only bad policy for the United States, but that it would harm our continuing negotiations in the GATT and the OECD to reduce such barriers.

But even where extensive and discriminatory foreign government reporting requirements exist, the confidentiality of business information is respected. Contrary to the assertions of the authors of the bill, there is no international precedent for this bill. This point was made clearly in the December 1988 Treasury Department survey of foreign government investment reporting an disclosure rules. The Treasury study concluded that no other major industrial country government "keeps a public registry for specific investments nor discloses detailed information even to selected researchers or GAO counterparts."

The Bryant-Harkin foreign ownership disclosure proposal would require public disclosure by the foreign entity of:

-- "Details regarding acquisition of the property; The size of the interest acquired in the United States property and the price paid for the interest;"

-- Detailed operating and financial information on the acquired enterprise, as verified by outside audit;

-- Identity, nationality, compensation and related business interests of executive officers and directors.

Moreover, the registered investor has the difficult and sensitive duty of providing annual statements on the "market value" of all U.S. assets. There is no similar "market value" estimates required

on reports filed by U.S.-owned companies. Competitors or potential acquirers could benefit substantially if such data were to fall into their hands.

The high probability of disclosure of proprietary information is the worst and most damaging aspect of this legislation. Although the authors claim that for most companies this bill only requires "postcard" registration of data that was publicly available and harmless anyway, even they appear to recognize this point. Thus, the present bill differs from the originally proposed trade bill provision by supposedly "limiting" disclosure of companies' confidential and proprietary information to five classes of recipients:

-- All officials and functionaries named in the bill "including consultants and persons working on contracts" pursuant to the bill;

-- All committees and subcommittees of Congress, with such privacy protection procedures as established by each committee on its own;

-- The General Accounting Office, with privacy protection as established by the Comptroller General -- but with the GAO also allowed to disclose any information to Congress;

-- All states, via one designated agency in each state, with each state establishing its own privacy protection procedures in conformity with its interpretation of the GAO rules;

-- "Persons performing qualified research under procedures established by the Secretary of Commerce by rule or regulation" --this last designation is quoted in full because I don't think anyone has any idea what it means.

This list of potential recipients is so broad and ambiguous as to be meaningless as a restrictive device. Even the rules of disclosure could be as varied, for example, as the positions taken by fifty different state legislatures.

One other new aspect of this bill deserving of attention is a change in the penalty provision. What if a foreign company fails to report the required data -- or, more likely, reports data that is subsequently deemed inadequate or inaccurate (and remember this includes determination of "market value" of all assets). For the second offense, if it is considered "a pattern or practice of violations," the punishment is the equivalent of the death penalty: forfeiture of all U.S. assets subject of the reporting violation. Expropriation as a penalty for reporting violations is not only harsh, but probably violates international law.

One final issue that I would like to mention in discussing this bill is the alleged exemption for companies filing SEC reports, which NAM President Alexander B. Trowbridge, discussed when he testified before this committee last year on the earlier version of the bill. I will not repeat his comments in detail, but instead remind the committee that he established two important points. First, even most publicly-traded companies would not be covered by the exemption. Foreign issuers registered with the SEC that trade by selling debt securities or American depositary receipts (ADRs) are not covered by this exemption, for example. Secondly, the existence of an exemption for some SEC reporters does not reduce the discriminatory effect on privately-held companies. This could especially affect many smaller Canadian companies now guaranteed

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non-discriminatory treatment under the U.S.-Canada Free Trade Agreement.

The justification for such discrimination is that more information on investors is needed in the public interest. In fact, as the SEC and other data-gathering agencies under Administrations of both parties have indicated, there is at present adequate authority for gathering information on the growth of foreign direct and portfolio investment in the United States. In response to comments from NAM and other organizations, the publication of meaningful aggregate investment statistics based on the collection of such data has been speeded up in recent years. As Professor Douglas Woodward, one of the other witnesses scheduled to testify today, indicates in his new book, The New Competitors, the threat of such disclosure would probably worsen, not improve, the quality of the data. Moreover, the publication of such ordinarily confidential data could easily lead to the harassment of individual companies and the discouragement of individual investments.

NAM Views on the Murkowski Bill (S. 856)

It is our view that concerns with gaps and inadequacies in foreign direct investment data, or the way the data are reported, can best be addressed by targeted legislation such as S. 856. The principal concern in this bill is the role of governments in foreign direct investment. Senator Murkowski would like to see more public reporting on this aspect of the data. He also encourages increased interchange and compatibility between Census Bureau and Bureau of Economic Analysis data within the Commerce Department. S. 856 also

seeks to allow access to BEA confidential data for the Committee on Foreign Investment in the United States (CFIUS). This is the interagency national security review committee first established by President Ford. It has been raised to the Cabinet level and designated by President Reagan as responsible for the national security review of foreign acquisitions under the Exon Amendment to the Trade Act. S. 856 explicitly retains all the tough confidentiality provisions of the existing Investment Survey Act.

With respect to the substance of the bill, both official data and an informal review of major investments indicate that foreign governments have played a decreasing role in the recent rapid rise of foreign investment in the United States. Such investment has primarily been undertaken by private enterprises for commercial gain. Moreover, CFIUS can already make any foreign acquiring party provide any confidential ownership or other data for review, as a condition for approval of a transaction.

However, there may clearly be an issue of substance here. We would not oppose further congressional examination of this issue. With respect to any legislation, including S. 856, we would submit two primary concerns from the perspective of NAM member companies:

-- The legislation should try to avoid encouragement of discriminatory and retaliatory reporting or ownership rules against U.S. companies investing abroad;

-- The legislation should not in any way increase the likelihood of the disclosure, inadvertently or otherwise, of confidential and proprietary corporate data.

NAM Opposes Direct Restrictions on Foreign Capital

On the broader issue of foreign investment, our organization has always supported the free international flow of capital when it follows economic opportunity, allowing for appropriate monitoring of legitimate national security concerns. That is still our position.

Discriminatory treatment is contrary to the open market principles that encourage business investment in the United States in the first place. A discriminatory policy also ignores the possibility that such restrictions will justify an increase in foreign restrictions on U.S. investment abroad, just when it appears that we are making some progress in convincing other countries to eliminate investment restrictions that interfere with U.S. exports. This has also long been a position held by Administrations of both political parties.

Today we see three major initiatives aimed at liberalizing trade and investment regimes around the world. Each of these would be imperilled by major new discriminatory U.S. reporting requirements or other more directly restrictive policies.

-- Efforts to include discipline over "trade-related investment measures" (TRIMs) in GATT trade rules. Some type of ban has in principle been accepted by Japan and the European Community, as well as some of the developing countries. The major question now is the scope of the discipline and the definition of TRIMs to be included.

-- The "structural impediments initiative" (SII) added to the Bush Administration's "Super 301" actions aimed at Japan. The SII specifically names controls and prohibitions on U.S. direct investment in Japan. Both de jure and de facto investment

controls in Japan have been used to keep U.S. goods and U.S. companies out of the Japanese market, especially by preventing acquisition of Japanese companies with their existing distribution networks.

-- Further liberalization of the OECD investment codes. To quote from the just-released OECD ministerial report on increasing economic policy surveillance: "International direct investment has risen sharply since the mid-1980s in the wake of significant progress in dismantling barriers. These trends have been encouraged by application of the OECD [investment codes].... Recently, there have been disturbing signs of trade protectionist sentiment spilling over to the investment field. The scheduled 1990 review of the OECD 1976 Declaration and Decisions on International Investment and Multinational Enterprises will therefore provide a timely opportunity for governments to give further impetus to liberalization in this area."

Thus we have major liberalization initiatives going forward at the bilateral, OECD and GATT levels. These initiatives are important, we believe, because open international investment flows serve the U.S. economic interest in two fundamental ways.

-- Free investment flows help ensure that as we eliminate our trade and current account deficits, foreigners contribute with productive direct and portfolio equity investments in U.S. industry -- not mountains of interest-bearing loans such as those accumulated by the Latin American debtor nations.

-- Global investment liberalization combined with growing markets and a competitively priced dollar will ensure continuation of recent strong U.S. capital goods exports --so far the strongest element in the U.S. trade recovery.

With an officially estimated net international debt position of $533 billion at the end of last year, the United States has for several years been the world's largest debtor nation. Important and reasonable questions have been asked in the United States about the strong growth of foreign direct investment inflows, and their implications for the future of U.S. international competitiveness. In part, these questions derive from the unaccustomed U.S. position as a net international debtor and the rapidity of the change. From a $140 billion credit position in 1981 -- the world's largest -- the United States has swung sharply in the opposite direction by $670 billion in the 1980s.

During this period, foreign direct investment in the United States grew from $104 billion to $329 billion, while the U.S. direct investment position abroad rose from $228 billion to $326 billion. From a direct investment gap of $124 billion in favor of the United States, we have shifted to a $3 billion gap in favor of foreign direct investment here, at least in the official numbers. This $127 billion change plus a net increase of $198 billion in foreign private holdings of non-government portfolio securities account for about half of the $670 billion net change in the total U.S. international investment position since 1981. In other words, our trade and current account deficits of the 1980s have been half paid

for by the enticement of increased private foreign investment -- both direct and portfolio -- in the United States.

In these investments, foreigners assume the same risk as domestic investors should the U.S. economy falter or fail. And it is generally assumed that we cannot run trade and current account deficits of the present magnitude indefinitely. Thus, foreign corporate and private investors share our interest in turning around the trade deficit by increased U.S. exports, without domestic austerity and the long-feared "hard" landing.

Conclusion

To summarize my testimony, Mr. Chairman, I would like to make three major points.

-- First, NAM is opposed to any legislation which establishes discriminatory foreign investment reporting requirements, particularly if the confidentiality of proprietary corporate data is threatened.

-- Second, we are opposed to policies that threaten the ability of the United States to attract foreign equity investment in U.S. enterprises. We believe that such investment is the most productive way to fund the negative U.S. international financial position while we work to turn around the U.S. trade and current account deficits.

-- Finally, we continue to support policies aimed at continuing to open foreign markets for U.S. investment and trade.

August 15, 1989

Jerry J. Jasinowski
Executive Vice President and Chief Economist
National Association of Manufacturers

**Responses to Questions Asked by Senator Ernest F. Hollings
Chairman, Committee on Commerce, Science and Transportation
Pursuant to the Public hearing of July 11, 1989 on
Reporting on Foreign Investment in the United States**

QN 1

Do other industrialized countries require registration of foreign investment?

Some industrial countries require registration, others do not. Our foreign, commerce and navigation (FCN) treaties specifically allow registration and approval procedures, provided that they are not tantamount to investment or trade barriers. The principal subject of your recent hearing, the Bryant-Harkin Bill (S. 289), would, in our opinion establish such a barrier.

QN 2

Last year, NAM testified before this Committee on this issue. Most of the criticism was directed at public disclosure. This year the bills do not contain public disclosure requirements. Do you believe the five categories of persons listed for access are too broad? If so, which persons would you omit?

As I testified last month, the amendments in this year's bill provide no reduction in the likelihood of details of proprietary information becoming public knowledge. Since vast amounts of information on foreign investment are already collected by at least 16 different federal agencies for specific purposes, we do not believe that any expansion of this data collection effort is necessary, and that the privacy of competitive commercial information should be respected in the United States -- as we also argue that it should be abroad. NAM strongly supports the goals and maintenance of the Paperwork Reduction Act, not the needless collection and dissemination of more paper.

There is no evidence that present data fails to capture the major investment and impact trends, although specific valuation and classification levels could be debated. For example, while I personally don't accept the conclusions of Professor Woodward's analysis of the net new jobs created by foreign direct investment, his study certainly shows that there is a wealth of data available on this subject.

QN 3

There have been two articles recently on foreign investment and technology transfer. In a Washington Post article, the Chairman of Intel said he regretted turning to the Japanese for additional production sources. Others agree that small, high-tech firms desperate for capital are trading away their future for Japanese funding. Are you concerning about this?

I am very concerned by such stories. However, the source of the problem is not Japanese capital availability, but the uncompetitive nature of the U.S. capital market for industry. We have recently written the Federal Reserve Board Chairman regarding the desirability of reducing, not increasing, U.S. interest rates. And we have always supported your efforts at reducing the federal budget deficit. The number one competitor of U.S. business in seeking capital for investment at interest levels matching those of their foreign competitors is the U.S. government.

QN 4

A recent article in Business Week points out that in the past three years Japanese investors have put at least $650 million into minority positions in 120 high-tech companies. John Stern, Vice President of the American Electronics Association's Tokyo office has said that "Japanese investment is used as a vacuum cleaner for acquiring technology and exporting it home". One example used was Amgen, Inc., the biotechnology leader who let Japan's Kirin Brewery buy 50% of a joint venture formed to develop drugs to treat anemia and cancer.

Through the joint venture, Kirin has achieved the wherewithal to develop other products and the chief financial officer of Amgen was quoted as saying: "We're very concerned about the competitive pressure from Japan--including Kirin". Is this trend something we could or should keep track of?

Data on this trend is, in fact, available. Published federal statistics distinguish minority equity positions on an industry by industry basis from "majority-owned foreign affiliates" (MOFAs).

QN 5

Do you believe that BEA could publish aggregate information at the establishment level without compromising confidentiality?

We do not believe that the government should publish any data that would reveal proprietary information about individual companies, whether these companies are foreign-owned or U.S.-owned. As long as establishment-based data is released in aggregate form, so that individual companies cannot be identified, we would have no conceptual problem in using or publishing this data along with enterprise-based data. This answer also assumes that present

Paperwork Reduction Act controls would be maintained, so that no undue or discriminatory burden would be applied to foreign-owned reporting companies.

QN 6

Are you concerned that U.S. receipts from investments abroad almost equalled U.S. payments to foreign investors here and that it is projected that by 1993 net payments to foreigners will equal 1% of GNP?

We are very concerned by this trend, and have said so many times. The solution to the problem, of course, is not to reduce foreign direct investment, where returns are linked to the performance of the investment. Instead, we must reduce the government deficit, which directly or indirectly translates into a rise in foreign-held interest-bearing obligations that must be met regardless of circumstances. And we must, through increased exports, move from a trade deficit to a trade surplus, thus offsetting increased foreign net earnings.

QN 7

Dr. Woodward, who will be a witness on Panel 2, has done some work on the jobs aspect of foreign direct investment. Dr. Woodward has found that most jobs attributed to foreign investors came through acquisitions and that new investments created an average of 11,000 jobs per year in the 1980's. Does this suggest that incentive programs offered by the states may be misguided?

I cannot answer this question, because of the great variety of state programs and NAM's concentration on federal policy issues. I would only point out, that in discussing this issue with our members, we have adopted the view that state incentive programs should not exclude existing or prospective U.S.-owned manufacturers.

QN 8

Do you agree with those that believe foreign direct investment leads to import substitution? I will remind you that in 1988, U.S. affiliates of foreign companies had a trade deficit of 93 billion dollars.

Most of this deficit is attributable to the wholesaling and distribution facilities of foreign exporters to the United States, which count as "direct investment" under U.S. reporting rules. We are presently uncertain as to the degree that increased foreign investment in the United States will lead to import substitution and a lower trade deficit. Historically, U.S. capital goods exports tend to be associated strongly with our own investment abroad, for example.

But I must add two points in favor of the positive trade effects of foreign investment. First, most foreign investments in U.S. industry are still in the early phases, which tend to be heavily import-oriented. Imported content, products and capital equipment should fall as these investments mature. Secondly, in many industries it is very clear that foreign investors intend to integrate U.S. production into their global development plans. If we are to continue our export boom into the 1990s, we must have these global distribution channels provided by foreign investors.

QN 9

Do you agree with the OECD Declaration which calls for multinational corporations to disclose balance sheet information?

I'm glad you asked me that question. The OECD Declaration was mischaracterized in your hearing, unfortunately after I had already left the witness table, so I could not reply. The OECD declaration recommends that companies provide certain information on a purely voluntary basis. In fact, many of our international company members find that much of this information is routinely provided in their annual reports.

The NAM, along with the Chamber of Commerce and the U.S. Council for International Business, issued a tripartite letter strongly recommending that U.S.-owned companies publicly endorse the OECD "guidelines for multinational enterprises," including the information and disclosure provisions. Many did so. The most comprehensive and up-to-date list can be provided for you by the U.S. Council, which is the institutional representative of U.S. business before the OECD and in the International Chamber of Commrce. Most other OECD member countries' business associations undertook similar promotional activities regarding these guidelines.

The CHAIRMAN. Thank you.
Mr. Pickens.

STATEMENT OF T. BOONE PICKENS, JR., CHAIRMAN, BOONE CO., AMARILLO, TX

Mr. PICKENS. Mr. Chairman and members of the committee, thank you for inviting me to testify today. My name is Boone Pickens. I am general partner of Mesa Limited Partnership and the founder and chairman of the United Shareholders Association. I am also chairman of a private investment firm called Boone Co. based in Dallas, Texas.

As you know, my two Boone Co. partners and I recently made a sizeable investment in a Japanese automotive lighting company.

I am appearing today to relate to you our experiences and observations associated with this investment. With your permission, Mr. Chairman, I will summarize my written testimony which I have submitted for the record, and I commend you for holding this hearing on foreign investment issues.

The CHAIRMAN. Your statement in its entirety will be included. Go right ahead.

Mr. PICKENS. I think most people are familiar with where I stand on free markets. I have given a lot of speeches on the global economy and free markets. My recent experiences have given me some firsthand exposure with so-called open trade when Boone Co. purchased a major stake in Koito Manufacturing in March.

It proved to be a unique investment in two respects. It was the first time, to my knowledge, that a foreign firm purchased a major stake in a Japanese firm without the prior consent of company management and its network of stable stockholders called "kieretsu." The written testimony provides details of how this came about.

The investment is also unique in that it clearly reveals that investment and trade relations between Japan and the United States are not a two-way street. I do not profess to be an expert on Japan nor do I have a long history of dealing with the Japanese. Nevertheless, based upon my experience as the largest shareholder of a Japanese company, I believe that, under present circumstances, investment opportunities between our two countries cannot be pursued on an equal footing. It is not a two-way street, but you will not find this by looking at their laws. It is the silent barriers or secret laws. It comes from the structure of their markets and their biased practices.

Just take my experience as an example. Boone Co. owns 20.2 percent of Koito Manufacturing and is the company's largest shareholder. Toyota Motor Corporation owns 19 percent of Koito stock, and it has three representatives on Koito's board. Our request for three board members has been repeatedly spurned.

At the same meeting in which Koito's board refused to grant Boone Co. even one board member, it decided to provide a new seat to Matsushita Electric Company with only a 5 percent holding of Koito stock. Toyota and Matsushita are giants in the automobile electronics industries and perhaps more than other Japanese companies, they symbolize Japan's success in penetrating American

markets and displacing American jobs. Whereas we have thrown the doors of our markets wide open to the Japanese, certainly in my case, the doors of Japan's automotive parts industry remain locked shut.

It is ironic that Toyota and Matsushita are dominant players in America's automobile and electronics markets, but they have representation on the same board from which a much larger American stockholder is excluded. With Koito's sales up and profits down, we have asked to see company financial records and tax statements, yet we have repeatedly been denied these fundamental shareholder rights. Now, it is by Japanese security laws that we have access to this information. We were finally given access to two accountants who told us upon coming to our Tokyo office that we had 30 minutes to ask questions, and they proceeded to read the annual report to us for 30 minutes.

I went to Japan two weeks ago for Koito's annual stockholders meeting. By that time it was quite clear that Koito's management was determined to keep me or any Boone Co. representative off its board of directors. But why?

We are requesting only three seats with Koito's 21-member board. We could not be a threat. What could we do to disrupt the company and why would we want to do anything to disrupt the company?

As for taking over the company, that would be impossible. More than 60 percent of Koito's stock is locked up with their so-called stable stockholders who expect to make money through favorable business relationships rather than through ownership of the stock. With a 20 percent investment, our interests are the same as those of the shareholders and management—to realize Koito's maximum potential. We have no conflicts of interest whatsoever.

Until now, Japan has successfully exempted itself from the reciprocal imperatives of global trade. It wants open markets in which to sell and invest, but it does not want to provide the same degree of openness at home.

After examining the financial structure and management of a segment of Japanese industry, I simply do not believe all the rhetoric about Japanese long-term thinking. Their policy of exclusion is the shortest of short-term strategies, and this whole idea that they are somehow long termers and we are short termers is purely a myth.

The rest of the world is marching in the direction of freer trade and global competition. If Japan marches into the next century with a closed system, it is going to stumble and eventually fall. It just simply will not work.

In closing I would like to mention one more reason I think the Japanese are so intent on keeping their system closed to outsiders. Japan's cartels may well be exporting their system into the United States. As the Japanese build more factories here, their suppliers come with them. American suppliers are already complaining that they cannot penetrate these networks.

Virtually no antitrust laws exist in Japan. Its corporate structure is very similar to what we had in this country at the turn of the century, the period of big trusts. I would question whether the

Japanese structures do not also raise antitrust considerations under our own laws when they do business in our country.

And since Koito and its network—Toyota, Matsushita, Nissan and others—can easily outvote me, they must want to exclude me so that an American will not see how their cartel works. They do not want me inside.

Finally, I would like to note that Koito's president suggested the company wait two years before granting me ownership rights equal to those of their Japanese shareholders and then after two years they would only giving me my rights.

Maybe the "Dallas Morning News" had it right when it suggested holding Japanese assets in escrow for two years before giving them their full ownership rights.

As the newspaper put it, "What is good for the goose should be good for the gander." And I would like to thank the committee for inviting me to testify today on this important topic.

[The statement follows:]

STATEMENT OF T. BOONE PICKENS, JR.

Mr. Chairman and members of the committee, thank you for inviting me to testify today. My name is Boone Pickens.

I am general partner of Mesa Limited Partnership based in Dallas, Texas. I am also chairman of a private investment firm called Boone Co. As you know, my two Boone Co. partners and I recently made a sizeable investment in a Japanese automotive lighting company. I am appearing today to relate to you our experiences and observations associated with this investment. I commend you for holding this hearing on foreign investment issues. This is a critical matter now facing the country.

Uniqueness of the Koito Investment

When Boone Co. purchased a major stake in Koito Manufacturing in March it proved to be a unique investment in at least two respects. First, it was the first time a foreign firm purchased a major stake in a Japanese firm without the prior consent of the company's management and its network of stable stockholders. A second reason the investment is unique is that it so clearly reveals that trade and investment opportunities between Japan and the United States are not a two-way street. Before I discuss this latter point, I would like to recount how the investment came about, and some of the roadblocks I've encountered along the way -- the most recent one being at Koito's annual meeting, which I attended less than two weeks ago in Tokyo.

How it All Started

I first learned of the investment possibility last November through a Texas friend who knew a Japanese gentleman by the name of Kitaro Watanabe. Mr. Watanabe grew up in Japan, orphaned by the bombings of Tokyo, but through his efforts and initiative became a very successful businessman and entrepreneur. From various sources, including disgruntled members of Koito's founding family, he accumulated a major share of Koito's stock. But after trying to become an established member of Japan Inc., Mr. Watanabe figured that if an outsider were ever going to break through, it would have to be an American. So, through a friend-in-common in Texas, we met for the first time last November to discuss the possibility of buying into Japan Inc.

Why I Made the Deal

Over the next several months my two partners in Boone Co., Sidney Tassin and Robert Stillwell, and I met with Mr. Watanabe and his team ten times. We decided that buying Mr. Watanabe's share of Koito represented a good opportunity to make a profit. And that, frankly, is the reason we entered into the deal -- the same reason any businessman enters into any deal. We knew we were charting new territory and that there would be unknown obstacles along the way, but we assessed that the positives outweighed the negatives, and

that in the end we stood a good chance of making a profit. In March, therefore, we purchased 32.4 million shares of Koito stock from Mr. Watanabe, 20.2 percent of Koito's outstanding shares. This made Boone Co. Koito's largest shareholder, ahead of Toyota Motor Corp. with 19.2 percent.

The next month, I flew to Tokyo to meet with Koito, and to deliver a speech to the American Chamber of Commerce. I was stunned by the interest that the investment had generated. The crowd that had gathered for the speech was so large that we had to change rooms to accommodate the overflow. We were told by Japanese reporters that the press conference that followed was the largest in Japanese business history.

Koito Stonewalls

We had requested a meeting with Koito management several days before we left for Japan. When we arrived in Tokyo, our request for a meeting had still gone unanswered. In fact, Koito had still refused to register our stock. This, despite the fact that the Japanese Ministry of Finance and Ministry of International Trade and Industry had assured us that our filings were complete.

However, on April 19, the day of the Chamber of Commerce speech, Koito -- having failed to convince the Japanese government that our filings were incomplete or inaccurate -- agreed to

register our stock. After a press conference following the speech, Koito's management finally agreed to meet with us.

The next morning Sidney Tassin and I met with Takao Matsuura, Koito's president, and other Koito representatives. After exchanging pleasantries, and briefly discussing Koito's U.S. operations, Mr. Matsuura stated that he was glad to have had this first meeting, but he did not want to address any "difficult" questions. He explained that, in Japan, a first meeting was often just an exchange of business cards. But Sidney explained that we had come a long way and that we did have a few questions, none of which we deemed to be particularly difficult.

We inquired about the date and time of Koito's annual shareholders meeting, and asked to be allowed to send observers to their next board of directors meeting. Finally, we asked for representation on Koito's board of directors equal to that of their other large shareholder, Toyota.

With this last question, Mr. Matsuura stiffened. He and the other Koito managers engaged in a lively conversation in Japanese that included not a few unpleasant glances in our direction. In the end, all we got was the date and time of the next shareholders meeting -- 10 a.m., June 29.

Slamming the Door Shut

As for our other questions, we were told that we did not understand Japan's prevailing customs and practices. "In the future," said Matsuura, "Koito may consider thinking about whether you can be on the board. But we are not saying you can be."

"I am hearing that you do not consider us owners -- that we have to work our way in," I said. "I understand your custom, but not the logic."

"We have a different system," Mr. Matsuura replied. "This will take time, trust must be built. The logic is hard to explain...." The Koito managers asked that we not pursue the issue further and that we send a formal letter requesting representation on the board for "full consideration." I was about to learn that the Japanese notion of "trust" is not like the one we know in Texas.

As the meeting concluded, Mr. Matsuura asked that we not discuss the contents of the meeting with the press, that we honor the Japanese custom of portraying the first meeting as cordial and introductory. We were not trying to put Koito in an uncomfortable

position, so we agreed. When met by the press after the meeting, we honored Mr. Matsuura's request.

We went directly from the meeting to Tokyo's Narita Airport for the 10 hour flight back to the United States. Upon arriving home in Texas, we learned that Koito had held a press conference shortly after our meeting to announce that we had requested board representation and that our request had been turned down. So much for giving our request "full consideration."

Nonetheless, on April 21, we sent a formal request seeking board representation. We also asked that four representatives of Boone Co., including an interpreter, be allowed to attend the June shareholders meeting. Koito said that it was using its "best efforts" to accommodate our request. At the same time, Tokyo's financial press reported that both of these requests had been rejected. Then, on May 23, we received a letter saying that I could come to the stockholders meeting with an interpreter -- but no one else! I had to wonder what Mr. Matsuura meant by "building trust."

The Koito directors also denied Boone Co.'s request for three seats on their board of directors. Our request was based on the fact that Toyota, which owns 19.2 percent of Koito, has three representatives on the board. At the same meeting in which Koito refused to grant Boone Co. even one board member, it decided to

provide a new seat to Matsushita Electric, a company with only a five percent holding of Koito stock.

Toyota and Matsushita are giants in the automobile and electronics industries. And perhaps more than other Japanese companies, they symbolize Japan's success in penetrating American markets and displacing American jobs. They also symbolize America's lack of reciprocity with regard to Japanese markets. Whereas we have thrown the doors of our markets wide open to the Japanese, the doors to Japan's automotive industry are locked shut for an American investor. It is ironic that, in so far as Toyota and Matsushita are dominant players in America's automobile and electronics markets, they have full representation on the same board from which a larger American stockholder is excluded.

"Building Trust"

Koito's standard line has been that it cannot trust me until it establishes that I'm a long-term investor. Koito's president suggests that it may take up to two years to establish this fact. However, we fully complied with Japanese law in making our filing for the Koito stock. Before we purchased it, we had the full approval of the Japanese government. It is now registered in my name by both Koito and the government. In the United States, we don't require a two-year holding period to establish trust. It should not be this way in Japan, either.

Japan's "Wall Street Journal," the Nihon Keizai Shimbun (June 15, 1989), also agrees: "As long as the name of Boone is included in the company's shareholders' list, however, Boone is a true major shareholder. It is absolutely inappropriate for Koito to suspect that 'Boone may not be a true shareholder,' and to not respond to Boone's requests by saying that Boone has not replied to the questionnaire on shareholder status."

Boone Co.'s Interests the Same as Koito's

By the time I was ready to leave for Japan for Koito's annual meeting, it was quite clear that Koito's management did not want me, or any Boone Co. representative, on its board of directors. But why? We were requesting three seats. With Koito's 20-member board, we could not be a threat. What could we do to disrupt the company, and why would we want to? As for taking over the company, that would be impossible: More than 60 percent of Koito's stock is locked up with stable, corporate stockholders. With a 20.2 percent investment, our interests were the same as those of all the shareholders and Koito's managers, namely, to realize Koito's maximum potential.

No Two-Way Street

I am not an expert on Japan, nor do I have a long history dealing with the Japanese. Nevertheless, based on my experience, I have come to the conclusion that investment between our two countries is not a two-way street. Every day we read about a Japanese company or investor making a major investment in American real estate or taking over an American corporation. I have no objection to that if Americans have the same opportunity to invest with full rights in Japan. This problem is difficult because the most powerful impediments in Japan are not legal restrictions, but silent barriers produced by nationalistic custom and practice.

I believe my experience symbolizes, in many ways, U.S.-Japan trade relations on a much broader scale. It certainly underscores that the U.S.-Japan trade relationship is not a two-way street. As I stated earlier, the great irony is that the American market which Japan has been most successful in penetrating -- and which has cost the most American jobs -- is the same market it is now preventing an American from entering; that is, the automobile market. And one in six American jobs is tied to the U.S. automobile industry. This statistic highlights how Koito's practices point to something much larger.

As you probably have read, some have compared my arrival in Tokyo to the arrival of Commodore Matthew C. Perry's black ships in 1853. Perry compelled cloistered Japan to open up to the rest of the world and in the end was received with open arms. I was not, however -- not in April, and not in June, when I attended my first annual meeting of Koito Manufacturing.

Given the Stiff Arm

Unlike Commodore Perry in the fortified harbor of Uraga, I was shot down decisively at the annual meeting. My request for board representation was again spurned completely. I had to wonder -- out loud -- if the reason I was denied my ownership rights was because I was not Japanese.

Although common sense dictated that Boone Co. was entitled to three seats on the board, it had become clear that common sense was not having the upper hand in this whole affair -- or, for that matter, in much of present-day corporate Japan. The fact is that Japan Inc. does not want an outsider observing its system from the inside. And apparently it will do anything -- even if it defies common sense -- to prevent open access to Japan's financial markets.

Japan Will Have to Open Up

With the second largest economy in the world, Japan simply cannot remain closed to the rest of the world. It cannot continue to live by a double standard. It must open up its markets -- especially to the United States, which allows Japan virtually free access to its markets. Japan's future depends on it.

Until now, Japan has successfully exempted itself from the reciprocal imperatives of global trade. It wants open markets in which to sell and invest, but it doesn't want to provide the openness at home on which stable global trading relationships must depend in the long run. After examining the financial structure and management of a segment of Japanese industry, I simply do not believe the rhetoric about the Japanese being long-term thinkers. Their policy of exclusion is the shortest of short-term strategies. If Japan marches into the next century with a closed system, it's going to stumble and eventually fall. The rest of the world is marching in the opposite direction.

I am convinced that Japan will never be a meaningful market for American products, and that our $55 billion trade imbalance will not be reduced, until its financial markets -- as well as its whole approach to trade -- are restructured. That's why I am delighted that, in deciding to list Japan as an "unfair trader" under Section 301 of the Trade Act, President Bush has proposed to undertake wide-ranging talks with Japan aimed at altering "structural impediments to trade." This could lead to truly free

markets where shares are not locked up to facilitate clubby economic relationships, but are bought and sold freely based on an underlying system of risks and rewards.

Corporate Japan at a Crossroads

Corporate Japan is now in a similar state which corporate America found itself about hundred years ago during the age of the great cartels and robber barons. At the turn of the century, we began to break up those trusts and open our markets to everyone who wished to participate. The trust-busting unleashed America's entrepreneurs and proved to be a great boon to the country. Further, the workings of our free market system have spurred the restructuring and economic revitalization that American industry has experienced in recent years.

The "Kieretsu" are Outmoded

I believe that what has happened in the United States during the 1980s will happen in Japan in the 1990s. What we are now seeing in post-War Japan is an entrepreneurial generation giving way to a managerial generation. The corporate stock of the founding entrepreneurs has been distributed to stable stockholders. These stockholders are primarily corporations that have formed a system of interlocking relationships that are

essentially cartels. The Japanese call this web of stable stockholders "kieretsu."

Japan's Asahi Shimbun (July 1, 1989), reports that "nearly 70 percent of all the publicly traded shares in Japan are held by institutional investors and other corporations." These corporations have more to gain from their business relationship with each other than from the ownership of the stock itself. They hold the stock not for its dividends, but simply for mutual control and protection. The system does not provide accountability. As a result, corporate assets are not put to their most efficient use possible. And that's why, eventually, individual Japanese shareholders will assert their rights as owners of corporate Japan. Apparently, the Nihon Keizai Shimbun agrees with me. I quote at length from an editorial dated June 15, 1989:

> "In the U.S., shareholders have greater rights, and if one becomes a major shareholder and holds a fifth of the total stock of a company, one will have some right to comment on company management. In Japan, on the other hand, most major shareholdings come about as a result of owning stocks (based on the company's request) in order to strengthen and stabilize business relationships. In other words, it is usual to become a major shareholder based on the agreement of the company issuing the stock.

"To put it another way, when a company or person who is not related to a given company acquires a number of that company's stocks independently, he is rejected by the company. Such a rejection was seen when Minebea Co., Ltd. secretly acquired stocks in Sankyo Seiki Mfg. Co. Ltd., and this Boone case is similar. There are many differences between the U.S. and Japan in the joint stock corporation system, and this is causing the problem between Koito and Mr. Pickens.

"However, it is a very typically Japanese phenomenon for a company to treat unfavored shareholders coldly and to reject a hostile stock acquisition that is designed to get control of management, despite the fact that the company may be benefitting from that stockholding.

"Although Japanese companies freely conduct hostile takeovers in the U.S., American companies can't do the same thing in Japan. If we simply say, 'When in Rome, do as the Romans do,' there will arise nothing but friction. The Koito-Boone issue indicates a need to reconsider the customs and practices of our corporate society."

Japan's Success Built on Back of Average Citizen

The Japanese economy has been built on the backs of the average Japanese citizen. For all their remarkable success and

productivity, the Japanese still have a rough go of it in everyday life. The Japanese pay considerably more at home for many items they themselves produce than foreigners pay for the same items abroad. This fact alone points to the misconceptions we have of Japan's present-day economy and society. And yet a higher standard of living for all people ought to be the very goal of economic activity. It should be the goal of free enterprise and free trade everywhere.

That's why Japan Inc. will have to change. The Japanese people will demand it. Their reaction to the political scandals that are now rocking the nation is perhaps a foretaste of a higher degree of accountability they will require of their corporate leaders.

Koito's PR Offensive

I went to Japan to press for shareholder rights -- my shareholder rights -- and was given a stiff arm. My own company, Koito, hired several investment firms to "defend" against me. This, despite the fact that I have stated countless times that I have invested in Koito for the long term and that I will not accept greenmail (and have never done so). The irony is that three Japanese investment firms hired by Koito have bought major interests in American investment firms, and have hired their

American counterparts to thwart my attempts to participate in the company.

One such firm, Wasserstein Perella, was present at the annual meeting to distribute literature to discredit me. It was a characteristic smear campaign. Another irony is that with Koito's recent financial performance, there's no way management can justify spending the lucrative sums I know these firms command -- especially against the company's largest stockholder. This means, of course, that I'm forced to foot one-fifth of the bill for the very hired guns who are attempting to discredit me.

Another of these American hired guns is Peter G. Peterson, former secretary of commerce under Richard Nixon, and now chairman of the Blackstone Group, 20 percent of which is owned by Nikko Securities, one of the companies hired by Koito. Just recently, Mr. Peterson asked me if he could represent my interests in the Koito deal. When I said I had no need for an outside advisor, he signed up with Koito management to work against me.

So, the Japanese buy into Wall Street and then end up using their American connections to try to keep out an American businessman who is trying to buy into Japan. This is not unlike the approximately $400 million the Japanese spend annually to lobby Washington to protect their interests. And they have been extremely successful.

Japan Not Prepared for 21st Century

The Japanese now own about $200 billion in assets in the United States. And when an American businessman purchases 20 percent of a relatively small Japanese company, he is excluded. Clearly, Japan's antiquated corporate system cannot survive for long. It is outdated and outmoded for today's global economy. Its insular structure protects a controlled market. Its abusive, invisible barriers keep foreigners out.

Evidently, the Asahi Shimbun agrees. In a July 1, 1989 editorial, the newspaper says that "one should not overlook the fact that (Boone Co. is) making some valid demands" and that "the showdown between Pickens and Koito made it clear that the Japanese business world has serious problems, such as company management being backed by the proxies of its stable stockholders, the rigid control by big corporations of companies that are affiliated with them and the fact that sharcholders meetings are mere rituals.

"We wonder how long such Japanese business practices can last in the globalization of the Japanese economy. Other companies here cannot dismiss the friction between Koito and Pickens as being none of their business."

Implications for the United States

Nor, I believe, can the United States. Japan's cartels may well be exporting their system into the United States. As the Japanese build more factories here, their suppliers come with them. American suppliers are already complaining that they cannot get a piece of the action.

Virtually no anti-trust laws exist in Japan. But since its corporate structure is very similar to what we had in this country at the turn of the century, I would question whether Japanese trusts do not also raise anti-trust considerations under our laws when they do business in our country. Since Koito and its network -- Toyota, Matsushita, Nissan, and others -- can easily outvote me, they must want to exclude me so that an American won't see how their cartel works. They don't want their system exposed for what it is.

In this regard, The Dallas Morning News had an interesting proposal a week ago Sunday.

> "The Koito management suggests that a proper waiting period should ensue, say two years, before Mr. Pickens will be considered for board representation.

"Fine. What is good for the goose should be good for the gander. The United States should consider a law requiring that any stock owned by a Japanese company or citizen in a U.S. company must be held in trust by a U.S. agent for two years -- and that no Japanese stockholder be allowed to vote that stock or to sit on any board or management committee for a two-year period. We certainly want assurances that Japanese investors are here for the long haul and are fully acquainted with the intricacies of a company's workings.

"The Japanese suggest that they have their way of doing things and that it is different there than in Texas.

"OK. Let's do things their way."

So I am not alone in questioning whether Japan is prepared for the world economy of the 21st century. While the Japanese people have done remarkably well in recent times, if they do not make serious attempts to open their closed economy, their continued economic prosperity will undoubtedly suffer -- if not of stagnation from within, perhaps of retaliation from without.

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[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

Question 1. What kind of information did you have to provide the Japanese government about you, your company, and your potential investment, in order to purchase Koito's stock?

Answer. Boone Co.'s purchase of shares in Koito Manufacturing Co. Ltd. was reviewed by the Ministry of Finance (MOF). It is my understanding that the MOF will often confer with the Ministry of International Trade and Industry (MITI) and Ministry of Transportation (MOT) on certain transactions. The filing with MOF contained the following primary information:

1. Identity of acquiror, including nationality, nature of business, capitalization, number of employees, sales volume, etc.
2. Identity of company in which you were investing, including office locations, nature of business, capitalization, and information on lines of business, sales, etc.
3. Amount of investment and manner of acquisition.
4. Composition of the officers and directors by nationality (Japanese or foreign) for acquiror and acquiree, list of other major shareholders.

Question 2. Where your filings made with the Ministry of Finance and the Ministry of International Trade and Industry required prior to, or after, the purchase of Koito stock?

Answer. The filings had to be made and approved prior to the purchase.

Question 3. Many people argue that reporting requirements, such as those proposed in the Harkin/Bryant legislation, would have a chilling effect on foreign investment. Yet, I note in your testimony that Koito was a good investment in your mind because you saw the opportunity to make a profit. As a businessman, would requirements to report and disclose basic business information affect your decision to invest?

Answer. I believe that the purpose of the Harkin/Bryant bill—instituting a reporting requirement to develop more accurate information for policy makers about the extent of foreign investment in the United States—could provide information that may contribute to a better understanding of trade barriers throughout the world.

While my specific interest is in the obstructions to foreign investment in Japan, I would like to compare the relative levels of foreign investment activities in the United States to those in Japan. After all, our ultimate goal should he open markets throughout the world. In that way, capital will flow freely in response to economic factors without regard to geographics borders. A vast discrepancy between the foreign investment in the two nations would confirm the absence of the two-way street that is so critical to achieving open international markets.

Question 4. Throughout your testimony, you are speaking out in favor of reciprocity. How do you think we could achieve reciprocity when so many of the barriers to investment in Japan are based on custom and practice as opposed to law?

Answer. I am not so naive as to think that a culture virtually isolated from the world for centuries will suddenly adopt the social, political and economic principles of the western world. For example, no action by any foreign government will result in immediate breakdown of the unwritten law that deters foreign investment in Japan. The U.S. government could, and should, develop as soon as possible a comprehensive plan to identify and address the problem. One thing we do know—the Japanese will not respond to moral sauasion. The past efforts of the U.S. government have yielded nothing but Japan's acknowledgments of concern coupled with its more determined effort to acquire a dominant share of the world market for Japanese products.

It is abundantly clear that the Japanese understand economic trends. Thus, the preeminent theme of our trade policy with the Japanese should be to present them with real economic choices. They will aggressively defend the status quo unless and until the U.S. implements a policy that requires the Japanese to accept the economic consequences of their actions. Therefore, the Congress and the Administration should marshall all of the economic tools available—especially the Super 301 and the Structural Impediments Initiative processes—to present the Japanese with two alternatives: (1) grant U.S. companies and investors the same level of access enjoyed by the Japanese here in the United States; or (2) pay the economic consequences for the failure to open their markets.

Question 5. In your testimony, you touch on the issue of foreign investors' ability to influence the American political process. Do you believe foreign investors' inter-

ests are necessarily different from our interests? Are your interests for Koito any different from our fellow Japanese shareholders?

Answer. Every investor may have different, specific objectives, but all have the same general objective—to invest on heads-up basis and have an opportunity to compete on a level playing field and, hopefully, profit from their investment. In Japan, the business community is dominated by a select group of companies and individuals exercising cartel power. A cartel of self-interested decision makers seeks to dominate the world market place, which certainly would be contrary to the economic interests of all Americans. To the extent that foreign investors seek to incorporate this highly concentrated power structure into our market, Boone Co.'s interests would be dramatically opposed to those of such foreign investors.

Almost seventy percent of the publicly traded shares in Japan are owned by a select group of corporations and institutional investors. Moreover, a complex network of interlooking corporate groups and families control through intricate webs of cross-ownership a majority ownership in Japan's most powerful companies. The membership of this so-called "Keiretsu" or "stable" stockholders vigorously defends incumbent management.

In contrast to the Keiretsu, the shareholders owning the other thirty percent of publicly held shares—and this group includes Boone Co.—are really second-class citizens. The Keiretsu does not consider the interests of the other thirty percent because their support is not required to implement corporate policy and their potential opposition presents no threat to incumbent management.

As a result, companies like Koito engage in business transactions that favor only the Keiretsu rather than all shareholders. Dividends are minimal because the Keiretsu member obtains a return on investment through their business relationships, not through dividends. This policy creates an inherent conflict between the Keiretsu and the minority shareholders. Therefore, Boone Co.'s interests are opposed to those of the Keiretsu but consistent with the minority shareholders.

Question 6. You have noted in your testimony that the Japanese government posed no obstacles to your investment. Your complaints have focused on Koito management. What can the U.S. government do about institutional or cultural barriers to investment.

Answer. As I noted in the answer to question 4 above, if the U.S. government implements a clear policy that forces the Japanese to consider economic alternatives, then changes will occur. Right now, the Japanese have no incentive to alter their course. All of their cultural barriers—what I call silent law or the unwritten code—are reinforced by their success in the world market.

The CHAIRMAN. You see, Mr. Pickens and Mr. Jasinowski, it is not a dilemma as to whether foreign investment is good or bad. We have passed that point. Foreign investment is good. We have an affirmative action plan by all 50 states for foreign investment, but the question is the degree of foreign investment, whether in a particular security-sensitive-type industry on the one hand or having reached a size or volume to have stultified any further investment here in that particular manufacturer which would inure to our detriment.

Now, I think Mr. Pickens has brought us right into focus, and let me comment, that I agree with you that Japan does not have antitrust. They have pro trust. We sold Chevrolets and Ford automobiles in downtown Tokyo before World War II. After the war, they licensed Nissan and Toyota, and that is all. And then with our technology, U.S. technology they began to develop a quality product. It was lousy at first, but after financing it and with the controlled market, pro trust not antitrust and controlling the price. That Toyota, for example, that sells here for $15,000 in the District of Columbia costs you $19,000 in downtown Tokyo. It is still under that controlled situation.

Now, this is a matter of policy. You are getting people who were recently writing books on it and everything else like that. It has been known for some time, and they try to finesse it with the word

culture. They have got the same culture you and I have got. Money talks. That is the culture.

So, what they are saying, Mr. Pickens, to you is just that. We do not mind having your money, but we do not want your influence. We do not want you to know how we operate. We do not want you to advertise. Your plea is for fairness before a democratic congress that is based on fairness, and if we had the right to do anything about it, we would have long since done it, we would have gotten fairer treatment with my wristwatch, and they do not make wristwatches in America anymore. They used to manufacture them in South Carolina, and I could go right on down the list.

Shoes, 84 percent of the shoes on the floor in this room are imported and we are going out of business there. Textiles, we can just list them down. You know, electronics, TVs and now they are into the computer and the airplane market, and it comes a time when that is the competition, and we are crying and moaning fairness, be fair, be fair.

I am for fair trade, you know. What a bunch of fools that crowd is. They have been calling for fair trade for 35, 40 years and have not gotten anywhere and do not understand that money talks.

Old Roosevelt in the days of the depression to keep the banks open, he closed the doors. In order to save the farms, he plowed under the crops. And today, in order to remove that barrier to Mr. Pickens, we have got to raise one and then remove them both. Reciprocity. Business is business.

I do not know where we get the idea that economic forces do not work in politics. They work in the market and they work in politics the same blooming way.

When we make it in their economic interest, you will get a seat on that board. You will get your papers and everything else, but that is a given.

You have done a wonderful service for America's understanding of the competition, and I am delighted that you have come before the committee, and it is not just a political thing to get you fair treatment. We have not gotten fair treatment for anything, any of these items. They just come right on down the list and put us out of business in all of these, and we just finally in a limp fashion are beginning to respond with semiconductors.

Yeah, we do have a modicum of voluntary quotas on automobiles, a few little things, but not much. And you are not going to ever get into MITI. That is what you are saying. You are trying really not to influence MITI but to find out how it works. You still do not know how it works, although we know you have been denied.

I am delighted with the appearance of both.

Mr. Jasinowski, where has it chilled Japanese investment in any of the group of seven countries?

Mr. JASINOWSKI. Let me say that I think we do not oppose further information. We do not oppose modifications. It is not a question of reciprocity. I would also associate myself with Mr. Pickens' remarks with respect to the need for additional leverage on the Japanese, as well improved information. Perhaps it is just a question of why do we have to go to the Harkin-Bryant bill as the solution. That is where I get off the train.

The CHAIRMAN. Is not the Harkin-Bryant bill just to know whether or not there need be a solution? That does not solve anything other than our ignorance, and here is a Congress that you have got to know.

I have been up here 23 years. I have heard that numerous times. Now, when I am trying to become informed, I have got the leaders of American industry coming before the Congress and saying do not ask those questions. You are going to chill this. You are going to ruin the integrity of the reports we are getting now that we are not using.

It is the biggest bunch of nonsense I have ever heard. How in the world are we going to know when and if in a timely fashion there need be a solution. I do not think there is one right now. I do not think my state of South Carolina ought to cut off foreign investment, and I do not think any of the other 49 should, and that is not the problem I am trying to solve.

I am trying to inform myself as I go down the road so that I can legislate in a timely fashion if need be.

Mr. JASINOWSKI. Well, Senator Murkowski's bill, I think, is a step in the direction of a reform of information and improvement of information, although its target is different. It goes to the Commerce Department question.

I think all the issues there about making the data compatible and making it appropriate and so forth are all good ones, and we support that. It is a question of do you need to disclose confidential information about companies in order to proceed in this area.

The CHAIRMAN. Very good.

Senator Robb.

Senator ROBB. Thank you, Mr. Chairman. Just one brief clarification from Mr. Pickens if I could.

I think I understand the situation you encountered with Koito and your requests and what have you, but in making a comparison between the situation that you found in Koito presumably representative of other Japanese corporations and the situation you would find here in this country, if you had 20 percent of the stock and there was no provision for cumulative voting or whatever the case may be and you had a group of directors that were, as in most cases, at least, friendly with each other and inclined to carry out the wishes of the chairman, could you in effect accomplish here what you could not accomplish in Koito in terms of any differences in laws or in terms of the facts of the situation?

Mr. PICKENS. No, not really. I do not think any laws that we have would put three people out of 20 on the board.

I am going to answer that, but let me go into it this way: We had said from the outset from our initial release that we were friendly—nothing hostile—that we had no desire to take over the company; we had no desire to be involved in day-to-day operations in the company; there was no greenmail involved. We were substantial stockholders, and we wanted to be represented on the board of directors.

Another point that is interesting here is that we have no business with Koito. Toyota with 19 percent, Boone Co. with 20 percent, and 50 percent of Koito's business is with Toyota. A former Toyota person is president of the company, Mr. Matsuura, and they also

have members on the board of directors, and they recently moved a Toyota person over as controller of Koito.

I do not think it would be very hard to assume here that there is a very close relationship to Toyota. As far as our getting on the board, I was surprised that they did not say, "Sure, you can have one seat or two seats, maybe not three seats." But there is no reason to. Here we were saying we will help you expand your markets, and we operated worldwide. We have been in Australia and Africa and the U.K. and Canada, Austria and other places around the world, and so we had contacts, and we were quite willing to use those contacts.

We think that Koito has—their R&D is good—a product that would go into other markets competitively, and so (but I cannot say that in the United States if I had a 20 percent interest) I think that if I said the same things that I said to Koito, the odds are that I would be invited on the board in the United States.

Senator ROBB. Thank you, Mr. Pickens.

Mr. Chairman, that is all I have.

The CHAIRMAN. Senator Exon.

Senator EXON. Mr. Chairman, thank you very much.

Mr. Pickens, let me ask you this question. I assume that you are somewhat familiar with the legislation that we are reviewing today. You have cited here today the difficulties that you have had as an American businessman trying to do business in Japan.

Do you have an opinion on whether or not the legislation that is presently before the subcommittee is good or bad and if you were a member of this committee, would you support or oppose any of the legislation that we are looking at this morning?

Mr. PICKENS. Well, I do not want to uphold myself as an expert on this legislation because I am not. I want to share my experience with you but not ask you for help because I am not here asking for help.

I think that you need to develop more information than we have here. I think it is too easy to come into the United States.

Let me just read quickly here what I was required to do in Japan that we found with the Minister of Finance under a foreign exchange disclosure. Their foreign exchange disclosure laws involve a lengthy, detailed filing. We had to hire Japanese counsel to make this filing for us. We were required to show what we were buying, what we were paying for it, the business of the company, the capitalization, et cetera. It is information similar to our Hart-Scott filing, but it is for a different purpose.

Then the Minister of Finance and MITI worked together behind the scenes on this particular thing, but, you know, I do not see those same disclosures on companies coming into the United States.

I think it is a must that we get more information than we are getting.

Senator EXON. So, I guess what you are saying, then, you are not—you are not in effect endorsing the legislation that is before us, but you are saying something more needs to be done. Is that a fair characterization?

Mr. PICKENS. That is correct. I have not studied the legislation that close. I just have not had the time to do it, but I think that

you the policymakers have got to develop more information and require companies coming in here to show us what they are doing, where they are coming from, and what their capitalization is and what their intent is and the like.

It is just too easy for them to come in here. And I am the guy that went out and made the speeches on free trade. I feel a little bit duped now that I finally get into this thing and see that it is not a level playing field.

Senator EXON. I am rather interested in that. I was familiar with some of your speeches about free trade in the past, and I was going to press you further on that, but I think you have covered it in your answers.

Mr. PICKENS. I am backing down now.

Senator EXON. Mr. Jasinowski, let me ask you this question since you and your organization oppose this measure. Are you familiar with the Exon-Florio amendment which was the first important step in the right direction in my view that we passed as a part of the omnibus trade bill which provided the President the authority to do an investigation and to make interpretation as to whether any foreign takeover would be adversely affecting the national security interest of the United States? Are you familiar with that legislation?

Mr. JASINOWSKI. Yes, Senator, we are familiar with that, and we supported it.

Senator EXON. I thought you did.

Now, what you are saying now, you think that going further down that road, which is what the bills before us would do would indeed have a what, chilling effect? Is that an overstatement? We hear that over and over and over again.

Mr. JASINOWSKI. I do not think it would go further down that road, Senator. I think the road you were pursuing, the national security road, remains the most valid issue within this whole debate about disclosure. I think that the road down which you went with the focus on the Committee on Foreign Investment in the United States getting better information, all of that is appropriate, and our members feel the same way.

I think that the Bryant-Harkin amendment is an amendment that is searching for a problem. We do not know exactly what it is, and I was intrigued when Senator Danforth was questioning the Senator as to why he wanted the information that there was no answer forthcoming.

I do not know where that amendment is going. I know where the Murkowski amendment is going. I can understand the rationale. I cannot understand the rationale for the Bryant-Harkin amendment. Therefore, I do not understand where it is going. Especially with respect to the confidentiality issue and the discouragement to foreign investment, this bill just launches a fishing expedition in my opinion.

Senator EXON. Do you have any concerns at all after hearing the testimony from Mr. Pickens this morning with regard to what he has just brought out in answer to my question?

You know, a level playing field, is a good sounding phrase and that's what we want in the free enterprise system. I am convinced that we do not have a level playing field with our business people

making investments abroad. Do you have any concerns in that area, and do you believe that the testimony that Mr. Pickens has given this committee this morning is something that we should do something about here, or not?

Mr. JASINOWSKI. I would associate myself with Mr. Pickens' testimony in terms of the Japanese situation almost in its entirety. It is the same problem that we hear from our member companies, and it is part of the reason why we supported the structural initiative effort as a part of the 301 decision, which said that there are special problems with Japan, and this investment question is one of the worst.

And we have got to get the Japanese to open up their investment markets, and we ought to do that. It is a top priority. And anything that pushes in that specific direction, as the structural impediments initiative does, we support.

Again, the Harkin-Bryant Amendment does not do that, and therefore, we don't understand any reason to support it. But as far as the Japanese investment restrictions, we think they are just as bad as Mr. Pickens says they are.

Senator EXON. Mr. Jasinowski, do you believe that if the Harkin-Bryant Amendment were to become law that we would ask anything therein from foreign investors making investments in the United States that are already asked by the Japanese and elsewhere, as testified to by Mr. Pickens this morning?

Mr. JASINOWSKI. Well, that's a good question, Senator.

I think it depends upon the country that you are looking at. Certainly, the way Mr. Pickens described the Japanese case it sounds quite similar to what is in the Bryant-Harkin bill in terms of its restrictive incent.

And so without further study, I would have to say the similarity struck me as well. I think as you get away from—into other countries, there are substantially less restrictions. Generally in Western Europe, there's nothing quite like that, which is I think again a reason to be cautious about a generic approach.

I do not think the restrictions around the world, in general, are anywhere near as significant as the disclosure threat in a Bryant-Harkin. The Japanese case seems to be a special case which bears a similarity, but again these is no public disclosure.

Senator EXON. Well, my time is up. I would simply that it is going to be pretty hard to pass a law that effects the Japanese only. Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Jasinowski, do you think Ambassador Carla Hills should have listed investment also?

Mr. JASINOWSKI. Well, Mr. Chairman, I believe, and here I may be wrong, but I believe in the actual further description of the structural initiative that the USTR did list aspects of the investment area. She did not make it as part of the 301 decision.

The CHAIRMAN. Do you think she should have?

Mr. JASINOWSKI. Our own position was to simply name Japan as a priority country and to not name practices. We thought that the big issue was to get Japan at the top of the list in terms of trade problems.

So I would suspect that the NAM would not have supported making investment a part of the narrow 301 decision because of

the time frame that implies. We did not want to get into a lot of specifics as much as we wanted to say this is our number one trade problem, and we want to get a special focus on it so that we can look at everything from investment to telecommunications, et cetera.

We think that that more focused approach is more productive.

The CHAIRMAN. Senator Danforth.

Senator DANFORTH. I think Senator Ford is before me.

The CHAIRMAN. Excuse me. Senator Ford, I apologize.

Senator FORD. Mr. Jasinowski, your position here today is the position of the National Association of Manufacturers.

Mr. JASINOWSKI. Yes, sir.

Senator FORD. Now, in the Exon-Florio amendment, which you approved and supported, tell me what areas are national security.

Mr. JASINOWSKI. Well, my recollection, Senator, and I really cannot say precisely all of the areas, but it did go to areas of national security, as defined by the President.

First of all, it is a fairly general statement, and there is not an effort to try to go through and list, and I am chagrined to be recounting it in front of the amendment's author.

But I think it is pretty general. And beyond that, we just——

Senator FORD. I just wondered what you thought national security was. Not necessarily what he thought. You support it, but nevertheless, what does the National Association of Manufacturers consider national security?

Mr. JASINOWSKI. I think our view is that it is a bit treacherous for the National Association of Manufacturers to begin saying energy is national security and semiconductors is national security.

I think most of our members would probably say those are. We think there is a process, an administrative and congressional, process which is to define the national security in this country and we do not really think we are as expert as the President and you are.

So if there is a process whereby the President says it is and the Congress confirms it, that to us is national security.

Senator FORD. Well, if the President declares it, you would support it, is that correct?

Mr. JASINOWSKI. I think in general the process is the way we are looking. I think that, beyond that, the only thing I can say in terms of our members' view, Senator Ford, is that issues having to do with narrowly drawn national security and national defense issues were those which I think our members very much had in mind, such as actual defense hardware and nuclear matters.

Those were issues which were clearly very much in their minds.

Senator FORD. Did I understand you correctly? You said one of your major problems is to have Japan to open up their investment markets?

Mr. JASINOWSKI. Yes, Senator.

Senator FORD. If I read Mr. Pickens, and I have read your full statement, Mr. Pickens, and I was right interested to see your actual presentation of your treatment there.

But if I read Mr. Pickens' statement right, if you could get Japan to open up their markets, you might save the country.

Mr. JASINOWSKI. Well, I think there is no more important trade policy issue. That is not a competitiveness issue, because we have the budget deficit and other things in our own country.

But there is no more important trade policy than improving trade with Japan. And I mean the surplus, as you know, is huge, and the restrictions are significant. That is why 301 was filed. That is why all of these things need to be done.

Senator FORD. I think Mr. Pickens statement indicates, and I do not want to relate your language, Mr. Pickens, but as long as they stay within themselves and continue the way they are, suddenly they are going to fall of their own weight.

Mr. PICKENS. May I comment about that?

Senator FORD. Yes, sir, I wish you would, please.

Mr. PICKENS. You know that I said I was not a Japanese expert, but I have had a lot of experience. In Japan, I saw about 200 limos pulling up to the door of the hotel at the close of work in the evening, and I saw those commuters loaded, I mean, just smashed in, with people standing up and going out for an hour, hour and a half ride on the commuter coming back in.

And the point that Senator Hollings brought up, I can give you one that is even worse than the Toyota car. Is the Panasonic cordless. In the United States, we pay $70 for it, and the Japanese pay $190 for it.

So somebody is packing that economy, and you can see who it is. It is their working people in Japan. So also, then, you start to reflect on other things as you watch what is going on there. You look at that Nikei index and see that 33,000 or something and going through the roof every day.

If you step back and look at that you can see 70 percent of those equities locked up in the hands of cartels and clubby relationships. If Japan is going to make it in the 21st century as the second largest economy in the world, it is going to have to make a lot of changes from where it is right now.

But I think a lot of the changes can be brought on by our Congress here. And when I think about where, I look at the secret laws that I see there—secret laws or whatever you want to call it—silent barriers or their cartel setup. But a comment that was made to me by a very knowledgeable person in Tokyo the other day was that "we do not have six antitrust lawyers in Japan."

And I can tell you if this thing gets rolling, there is a hell of an opportunity for exporting a bunch of lawyers to Japan. That's what I had in mind.

Senator FORD. Well, that might not be all bad either.

Let me ask you one other question. Let us reverse the procedure, where you bought stock in a Japanese entity and then were denied representation on the board. And then I find where our people join together and maybe get a consortium or a conglomerate, whatever you want to call it.

And we have foreign investments. And they put up a lot of front money. They have in recent major buyouts. What would happen to them in this country under those circumstances? Just, say, hypothetical, and I am not trying to point out. But, say, that foreign investor, what would happen to him if he had 20 percent?

There is no law as you say to put him on, but if he asked for it, he would be hard pressed not to recognize that investment for representation on the board.

Mr. PICKENS. I think if you will look at some of the investments that have been made in the United States just in the last two or three years, you can see Japanese representation on many boards in the United States, but also they have taken over a lot of companies in the United States.

I have some concerns when I see a company the size of Toyota becoming a partner with General Motors. That makes me a little bit nervous. I do not see the reason for that. I like stand-alone competition—head to head. I do not like to see these big companies partnering up like they are doing.

But you also see, when the Japanese make big investments in the United States, they get represented.

Senator FORD. Well, under the joint venture, I guess you would call it, with General Motors, I guess that is the California operation. They could not become partners. They just signed a contract to manufacture a car, didn't they? That is all.

Mr. PICKENS. That is all. I see that as a partnership.

Senator FORD. Well, I know, but they just signed a contract to manufacture this automobile, and so therefore, that does not get into our problems. And they have no antitrust problems in Japan.

Mr. PICKENS. It works pretty slick, does it not?

Senator FORD. I have to say I have enjoyed you, Mr. Pickens, and I hope we get a chance to visit again soon.

The CHAIRMAN. Thank you. Senator Danforth.

Senator DANFORTH. Mr. Pickens, thank you for giving us a very good case study of our problems with Japan, and I think this really helps bring home what the difficulties have been.

Mr. Jasinowski, you have heard the story of Mr. Pickens, and my question to you is, Do you believe that the Harkin legislation would be a plus or a minus as far as addressing that kind of a problem?

Would this strengthen our hand or put us in a better position to help Mr. Pickens, or would it put us in a weaker position?

Mr. JASINOWSKI. I do not think it would strengthen our hand, Senator, because first of all, it really is, in my opinion, a fishing expedition. It is not very precisely drawn. It is not quite clear why we need all this information, and in the process we damage a great deal of confidentiality.

And I think legislation, in general, is not terribly useful if it is not fairly precisely drawn.

Senator DANFORTH. You were pointing out, and I was really asking for you to elaborate on your comment in your testimony that our negotiating position with Japan and the object of the trade legislation that we passed last year was to give us the leverage to open up the markets of other countries.

And the question is whether this kind of legislation would advance the cause or set it back.

Mr. JASINOWSKI. Well, I appreciate your rephrasing the question for me. The answer is no, this legislation would not help us. I think you know how hard we worked on the trade legislation, how closely we worked with most of the members of this committee. That was important legislation. We now have it in place.

And we are struggling to implement it. We think the original, the first 301 decision with respect to Japan, was a good one. You could argue it one way or another, but it was a good one. And I think there remain a number of important issues with Japan that ought to be pursued in the context of GATT, any implementation of U.S. trade legislation.

And I do not see where the Harkin bill helps on any of that.

Senator DANFORTH. It tends to take a position, does it not? I mean it moves in the direction of taking the position that rather than opening up the markets of other countries, the United States is really looking toward closing their own.

Mr. JASINOWSKI. Well, I think that is right. You know, the thrust of your efforts on the trade legislation was in the market access area. As I remember very precisely, some of your specific amendments, and they were for market access, which is the name of the game from the point of view of American manufacturers and, I think, the name of the trade game.

This bill moves in the opposite direction. Let us close markets. I do not even see where it would be good leverage against Japan. If I could be persuaded it was good leverage, then I would say, well, maybe there is some sense to it.

But I do not see where it is good leverage. So I think it is not very productive.

Senator DANFORTH. Now, when I talk to business people in my state, one of their complaints is government red tape. They say that the Federal Government is too big. That it has too much bureaucracy. That there are too many forms to fill out.

That it is too much red tape. That the government will not let them alone and will not get out of their way. One of the efforts that we had when I first came to the Senate along with Senator Lawton Chiles was to pass something called the Paperwork Reduction Act.

And I have since had business people tell me, well that is a joke. I mean that makes paper worse rather than better. I do not know, but at least the effort was to respond to the concern of business people that we are deluging them with forms.

One of the concerns that I have had expressed to me after we passed the 1986 tax legislation is that, instead of simplifying the tax code, it made it even more complicated. Is there a general resistance in the business community to more forms, more requests for information, more questionnaires, more things for the bureaucracy to look at? Or has the business community sort of given up this area?

And do they now think that filling out forms and assigning more personnel to do paperwork is not so bad?

Mr. JASINOWSKI. Well, it is interesting, Senator. I think we went through a period in which regulatory reform was very much the focus, and then people drifted away from that and paperwork reduction.

I sense that, from the business community point of view, it has gotten worse again primarily because of the tax law. Dow Chemical's tax forms when they submitted it last year were about a foot and a half high. If you do not have big computers, you cannot even fill it out.

The whole brouhaha about section 89 is really a paperwork focused issue. And we did a poll recently at the National Association of Manufacturers which raised the paperwork and regulatory issue, and it was number five in terms of all the concerns facing manufacturing.

After high interest rates, the recession, foreign competition, you end up with just being overwhelmed with all this damn paper. So the answer is yes.

Senator DANFORTH. Would legislation that gave the business community more forms to fill out, more questionnaires, requested more information, would that tend to have a chilling effect on business activity? Or would it facilitate business activity?

I mean, the question has been asked repeatedly, what is wrong with giving people a stack of forms to deal with? That is simple information. Even if we do not go any further than just ship some truckloads of forms to people, would not that be enough?

So my question to you is even if we do not go further, even if the request for information were not the forerunner for regulation and restrictions by the government, would not the forms themselves be a further, an exacerbation of the tendency of government to swamp business with information requests?

Mr. JASINOWSKI. Yes, Senator Danforth, I think it would because of the extraordinary number of other requirements that are now facing businessmen with respect to forms, I think if you take just these forms, it does not seem that bad. But then you add that to all the other stuff, and it really is just becoming overwhelming in terms of the requirements you have to meet.

Senator DANFORTH. Thank you very much.

The CHAIRMAN. Thank you. Senator Kasten.

Senator KASTEN. Mr. Chairman, thank you. I hope, Jerry, we can repeal section 89. We are still working on it.

Mr. Pickens, there was a story going around here a couple of months ago that you were allowed to attend the board of directors meeting but you weren't allowed to bring an interpreter. I do not know if that is true or false. Was that true?

Mr. PICKENS. Let me say first, we asked for the three seats on the board and we were turned down for that. And then we asked if we could observe a directors meeting with no votes.

Senator KASTEN. A directors' meeting, not a shareholders' meeting?

Mr. PICKENS. Yes. And then the shareholders' meeting was coming up next, and so we asked for four seats at the stockholders' meeting, and they came back and said one seat only.

Senator KASTEN. One observer seat?

Mr. PICKENS. Well, no. I could go as a stockholder. I could vote, but only one could go. And so I asked if they were familiar with the community property law in Texas. And my wife felt that she had an investment there, too. And so they said, "No, she could not go, but that I could bring an interpreter."

So I did get to bring an interpreter with me. And Bea just said she was going to go ahead and try them at the door anyway. She is a very attractive woman and walked up to the door and they said, "No, she could not come in."

And then she—if you would just bear with me a second—I would like to tell this story. We are the only ones who ever brought a stockholders' meeting outside to the press, and Koito did take it out on TV to a TV monitor. It was Koito's TV. And so Bea found out where the monitor was and went to the room to watch it.

And one of the investment bankers for Koito, Toby Myerson, blocked her at the door and said, "No, you cannot come in." And she said, "Wait a minute. I am paying for part of this deal." And they still would not let her in, which made it kind of an interesting scene where a stockholder could not go in and watch it on a monitor.

But I did get to go with my interpreter.

Senator KASTEN. I have a bunch of different articles, Mr. Chairman, about this question. I would just like to ask that one be included in the record from the Dallas Times Herald, Sunday, July 2, entitled "Closed Markets Hurting Japan." I just thought it was a good article on this particular subject.

The CHAIRMAN. It will be included.

[The article follows:]

[From the Dallas Times Herald, July 2, 1989]

CLOSED MARKETS HURTING JAPAN, TEXAS OILMAN SAYS

(Editors note: Amarillo oilman Boone Pickens recently acquired a 20 percent stake in Koito Manufacturing Co. of Tokyo. His request for representation on the board of the automotive parts maker was rejected at the annual meeting held in Japan last week. Pickens is renowned as a corporate raider and an outspoken advocate of shareholder rights.)

(By Boone Pickens)

My arrival in Tokyo—in the form of a 20.2 percent investment in a Japanese automotive lighting company—has been compared to the arrival of Commodore Matthew C. Perry's black ships in 1853. Perry, however, who spurred cloistered Japan to open up to the rest of the world, was received with open arms. I was not.

I attended my first annual board meeting of Koito Manufacturing on Thursday and, unlike Perry in Edo (Tokyo) Bay, was shot down decisively. Although my investment firm, Boone Co., owns a full one-fifth of Koito Manufacturing, my request for board representation was spurned completely. I had to wonder—out loud—if the reason I was denied my ownership rights was because I was not Japanese.

Actually, I was not surprised. In April, Boone Co.'s request for representation on the board was rejected out-of-hand by the board itself. Koito's president had personally told me that our request would be given full consideration. But this quickly turned out to be a sham. Immediately after I left my meeting with him—in fact, while I was on the way to the airport to leave Japan—Koito held a news conference to announce that our request had been rejected.

But we had been entirely reasonable. Just three weeks ago, Matsushita Electric, which owns only 5 percent of Koito, was granted a board seat. Toyota. which owns 19.2 percent, already has three members on the board. Common sense dictates that Boone Co., Koito's largest shareholder, should also be entitled to three seats.

But common sense is not having the upper hand in this whole affair—or, for that matter, in much of present-day corporate Japan. The fact is that Japan Inc. does not want an outsider observing its system from the inside. And apparently it will do anything—even if it defies common sense—to prevent open access to Japan's financial markets.

I believe my experience symbolizes, in many ways, U.S. Japan trade relations on a much broader scale. It certainly underscores that the U.S.-Japan trade relationship is not a two-way street. With the second largest economy in the world, Japan simply cannot remain closed to the rest of the world. It must open up its markets—especially to the United States, which allows Japan virtually free access to its markets. Japan's future depends on it.

Corporate Japan is now at the same crossroads at which corporate America found itself about a hundred years ago during the age of the great cartels. At the turn of the century, we began to break up those trusts and open our markets to everyone who wished to participate. The trustbusting unleashed America's entrepreneurs and

proved to be a great boon to the country. Unfortunately, with the decline of the entrepreneur-manager after World War II, American business began to stagnate—until the era of corporate restructuring in the 1980s.

And I believe that what has happened in the United States during the 1980s will begin to happen in Japan in the 1990s. What we are now seeing in postwar Japan is an entrepreneurial generation giving way to a managerial generation. The corporate stock of the founding entrepreneurs has been distributed to stable stockholders. These stockholders, which are often large corporations, have more to gain from their business relationship with another company in which they own stock than from ownership of the stock itself. The system does not provide accountability. As a result, corporate assets are not put to their most efficient use possible. And that's why, eventually, individual Japanese shareholders will assert their rights as owners of corporate Japan.

Until now, the Japanese economy has been built at the expense of the average Japanese citizen. For all their remarkable success and productivity, the Japanese have a relatively low standard of living. And yet a higher standard of living for all people ought to be the very goal of economy activity. It should be the goal of free enterprise and free trade everywhere.

That's why Japan Inc. will have to change. The Japanese people will demand it. Their reaction to the political scandals that are now rocking the nation is perhaps a foretaste of a higher degree of accountability they will require of their corporate leaders.

I went to Japan to press for shareholder rights—my shareholder rights—and was given a stiff arm. My own company, Koito, hired several investment firms—New York carpetbaggers—to "defend" against me. This, despite the fact that I have stated countless times that I have invested in Koito for the long term and that I will not accept greenmail (and have never done so). As for taking over the company, that is impossible: More than 60 percent of Koito's stock is locked up with stable, corporate stockholders. The irony is that all three Japanese investment firms have hired their American counterparts to thwart my attempts to participate in the company.

One of these Americans is Peter G. Peterson, former secretary of Commerce under Richard Nixon, and now chairman of the Blackstone Group, 20 percent of which is owned by Nikko Securities, one of the companies hired by Koito. Just recently, Mr. Peterson asked me if he could represent my interests in the Koito deal. When I said I had no need for outside counsel, he signed up with Koito management to work against me.

So, the Japanese buy into Wall Street so they can keep out an American businessman who is trying to buy into Japan. This is not unlike the approximately $400 million the Japanese spend annually to lobby Washington to protect their interests. And they have been extremely successful.

The Japanese now own about $200 billion in assets in the United States. And when an American businessman purchases 20 percent of a relatively small Japanese company, he is excluded. Clearly, Japan's antiquated corporate system cannot survive for long. It is outdated and outmoded for today's global economy. Its insular structure protects a controlled market. Its abusive, invisible barriers keep foreigners out.

I have to question whether Japan is prepared for the world economy of the 21st century. While the Japanese people have done remarkably well in recent times, if they do not make serious attempts to open their closed economy, there continued economic prosperity will undoubtedly suffer—if not of stagnation from within, perhaps of retaliation from without.

Senator KASTEN. I want to ask a question with regard to reciprocity. I asked a question yesterday or the day before, and there were some other articles I have read with regard to the way you were treated there as opposed to the way you have been treated here. Is there a difference between the way, for example, Gulf or Diamond Shamrock treated you with regard to the Board of Directors participation as opposed to the way Koito is treating you? It seems to me they are similar.

Mr. PICKENS. Let me take you back in time. We became Gulf's largest stockholder in 1983. We never asked for representation on the board. We never made any takeover attempt of Gulf Oil and we just wanted to restructure the company, so there was never a ques-

tion about the Board of Directors at Gulf, nor was there at Phillips, nor was there at Unical or Diamond Shamrock. We never asked for representation on the board of any of those companies and did not want to go on the board.

In the case of Diamond Shamrock, we tried to take them over as we did Phillips and Unical, but not Gulf.

Senator KASTEN. Then what is the import—if you had tried to get representation on the board of those companies, do you think you would have? Is that what you are saying?

Mr. PICKENS. I think that if I had gone to the companies and said the same things I have said to Koito—that there is nothing hostile here, that we want to work with you, we want to expand your markets—yes, I think I would have been considered for the Board of Directors for any of those companies.

Senator KASTEN. Now, you bought your shares—I do not know if you bought all of them, but from another person named Wantanabe. He was a Japanese. Did he have representation on the board? He was looked upon as a hostile takeover. Or at least, a hostile participant. Did you buy your 20 percent from him, or did you buy your 20 percent from the market and some from Wantanabe, and what was Mr. Wantanabe? Now, he is out of it completely?

Mr. PICKENS. Yes. We bought 20 percent of Koito from Mr. Watanabe, yes.

Senator KASTEN. Did he—he was the Japanese?

Mr. PICKENS. That is correct.

Senator KASTEN. Did he have directors on the board?

Mr. PICKENS. No, he did not.

Senator KASTEN. So they are treating you the same way they treated Mr. Watanabe?

Mr. PICKENS. Well, you see, I do not know whether he asked for representation. I do not know that.

Senator KASTEN. I have one last question, and that is——

Mr. PICKENS. And I do not know that he ever told them that he was nonhostile and that he did not want greenmail. We have told them that we do not want any of those things, and I told him I would be glad to sign a letter with you clearly stating that we do not have any idea of doing any of those things in the future.

Senator KASTEN. Now, with regard to the Toyota question. I have read somewhere that—I know it is in this article and a couple of others—that you are saying Toyota has less percentage stock ownership but that they have representation on the board but then I read somewhere else that what they have got is former Toyota employees. So, I mean what we are seeing is a little bit like a situation where because Lee Iacocca worked at Ford Motor Company, that now Ford Motor Company is in charge of Chrysler. Could you explain to me, are there former Toyota employees who are now working for Koito who have severed their relationship with Toyota, or are these people from Toyota who are still working at Toyota and they are in addition to the people who used to be Toyota employees?

Mr. PICKENS. Mr. Matsuura told me he came from Toyota but he had severed any relationship. He is the CEO of Koito, and I understand Dr. Toyoda said in Washington that the three people that are on the Koito Board are former Toyota employees.

Senator KASTEN. Is that the case?

Mr. PICKENS. I would believe him, saying that, yes. I have no reason not to believe him and my response to that is, I would be glad to put three former Boone Co. members, employees of mine, on that board if that will satisfy him.

There is a big difference here. I mean, I am clearly a stockholder without a conflict. I do not do any business with Koito and do not plan to buy any lights or cars from them, because I am not in that business, but I can help them sell those lights.

But I am coming up from the stockholders' side and not from the inside stockholders' side. Now, Mr. Matsuura asked me if I would be a stable stockholder at Koito, and I told him yes, I would be a stable stockholder, but I said that did not mean that I would be locked up in the stable.

So we would be glad to work with them, but I do not think it is hard to see that Toyota has a great influence at Koito.

Senator KASTEN. But the point then is that the people who are on the board are people who right now are working for Koito. They are not people that right now are working for Toyota. Is that correct?

Mr. PICKENS. That is what I understand Dr. Toyoda said, yes, and I would expect whatever he said as being fact.

Senator KASTEN. Mr. Chairman, I thank you and I thank both of you for your help today.

The CHAIRMAN. Very good. One final question. Mr. Jasinowski, I think you may have hit on it for the Committee when you said in an answer that it was not good leverage, which I of course assume that you believe in good leverage.

Now, maybe that is what this Committee ought to report, is a good leverage bill, substantially a bill that would require of the particular foreign country interest the same that that foreign country would require of an American investor.

Suppose we came out just tit for tat, nothing more, nothing less, in other words with Japan, and we word the bill—whether it is the Murkowski bill or the Bryant bill or the Harkin bill—we just came out with a bill and formulated it in general language that we would require the same as is required of American investors. Would you favor that?

Mr. JASINOWSKI. I think, Mr. Chairman, we would want to look at it in its precise formulation relative to the efforts now going on in GATT and the structural impediments initiative. I think we would have to weigh the progress being made there against enacting new legislation. We just passed the Trade bill, as you know, having been very influential in it.

The CHAIRMAN. That Trade bill was a tremendous compromise. We left out all kind of things that everybody wanted. We were threatened at the White House level with a veto. We had an overwhelming majority. I had one issue in there with 98 votes in the Senate, but we had to take it out as a sacrifice to get the bill's signature.

So I am not worried about GATT, I am worried about leverage, and I am trying to get the same leverage, let us say, as is required of Mr. Pickens and his investment—to require that same Japanese

investor right here in the United States. What is wrong with that? Is that not good leverage?

Mr. JASINOWSKI. I think it probably is, Mr. Chairman, and I think that I just could be most helpful by reflecting what I sense is the business community's overall attitude on restricting foreign investment right now.

The CHAIRMAN. They want an unfair advantage——

Mr. JASINOWSKI. I think most of them have to be persuaded that new restrictions or reporting requirements make sense. The leverage point which may make a lot of sense from a political point of view is seen as a significant economic risk. The business community would probably oppose even a bill that was structured the way you have indicated, although I certainly would want to work with you, as with others.

The CHAIRMAN. They would oppose good leverage.

Mr. JASINOWSKI. Well, I think they would have to say to themselves well, what do I get on the other side, and you know we are going into——

The CHAIRMAN. The same that is required of them.

Mr. JASINOWSKI. But we are going into——

The CHAIRMAN. That is what I am saying.

Mr. JASINOWSKI. Well, I think it certainly moves in a direction in which the debate would be more fruitful. But we are going into 1992. We are trying to break down a whole lot of trade restrictions.

The CHAIRMAN. Is that not a good way to break down barriers? We have not broken down any. The trend has been entirely in the opposite direction. With 25 percent of the financial holdings in this world I used to list four out of five American banks and then six out of ten, and now it is ten out of ten and we come in as number 21 in Citicorp.

When they have got all of this financial leverage and everything else—that tail is wagging this international trade dog and we have got to recognize it.

So do you not think it is about time we at least come in using good leverage say, let us translate the Japanese requirements into English and report that?

Mr. JASINOWSKI. It moves in a more productive direction, Mr. Chairman, and we would look forward to working with you and your staff on that sort of proposal, recognizing that there is, I think, considerable reservations about it, but nevertheless we would be pleased to work with you on it.

The CHAIRMAN. If we had that kind of leverage then maybe Mr. Boone Pickens could get his representation on the board, which is a very fair and honest request. But they do not even consider him because there is no downside for the Japanese. You and I have got to create in this government and in this country a downside so that we can inject reciprocity into our trade.

But we are not doing that and we are losing, losing, losing and everybody out in the countryside—I am glad for Mr. Pickens, particularly, because I hear these lectures on the floor of the United States Senate, well, they are not competitive. They are out playing golf. They have got to get more productive.

What is not competing and what is not producing is the government. Pickens will outcompete anybody if you give him a chance.

What he is complaining about is, he does not even have a chance to compete, and that is really at issue before this Committee with this particular measure.

We appreciate the appearance of both of you here today. We will ask Secretary Richardson and Dr. Douglas Woodward to come forward, please. Secretary Richardson, we welcome you back again before the Committee. We will be delighted to hear from you at this time.

STATEMENT OF ELLIOT RICHARDSON, CHAIRMAN, ASSOCIATION FOR FOREIGN INVESTMENT IN AMERICA, ACCOMPANIED BY SAMUEL M. ROSENBLATT, PRESIDENT

Mr. RICHARDSON. Thank you, Mr. Chairman. It is a pleasure as always to appear before this Committee. I have a rather lengthy statement which I would like to ask to have inserted in the hearing record.

The CHAIRMAN. It will be included and you can highlight it as you wish.

Mr. RICHARDSON. I certainly have no intention of reading it. I would just like to mention at the outset, Mr. Chairman, that I am a partner in the international law firm of Milbank, Tweed, Hadley & McCloy. I am also the Chairman of the Association for Foreign Investment in America, on whose behalf I appear before you today. I am accompanied by the President of the Association, who is sitting on my right, Dr. Samuel M. Rosenblatt.

The CHAIRMAN. Let me ask, Mr. Secretary, would you be allowed to represent Mr. Boone Pickens in Tokyo?

Mr. RICHARDSON. Would I be? Sure.

The CHAIRMAN. He would not have to have Japanese counsel?

Mr. RICHARDSON. We have an office in Tokyo that is allowed to practice U.S. law only.

The CHAIRMAN. How about representation before the Diet?

Mr. RICHARDSON. I am sure we would be able to talk to Diet members on any issue pending before them. I have in fact talked to many Diet members at one time or another on issues, although not on behalf of a client of my own. I do not think it would make any difference if I were doing so on behalf of a client.

The CHAIRMAN. Very good.

Mr. RICHARDSON. Mr. Chairman, what I would like to do, having listened with great interest to the testimony given here this morning, is just to touch on a very few points, beginning with the question raised by Senator Danforth with respect to what would be the use of the kinds of information to be reported pursuant to the Harkin bill.

We who have been closely involved with issues of foreign investment in the United States would agree that there is a use for information that can help in any way to illuminate the policy choices confronting the Senate or the House, or confronting the Executive Branch. We think that whatever information would genuinely help to illuminate those decisions should be available.

We recognize, for example, that the fact that foreign owners control 10 percent of U.S. energy sources, if it were a fact, would be

that kind of information. The level of participation in the chemical industry by a country is also that kind of information.

You referred, Mr. Chairman, at one point, to the importance of the degree of foreign investment in the United States. We would concur that the degree of foreign investment in any sector of U.S. industry is the kind of information that should be made available to the Congress and the Executive Branch and indeed the public generally.

The key point to be made here today is simply that that information is available. It is reported. The only issue presented by the Bryant-Harkin proposal is whether or not company by company information should be broadly or publicly disclosed.

All the arguments against the Bryant amendment that were made in the last Congress, and all the arguments that are being made now in this Congress are addressed to the policy considerations that make such disclosure undesirable—that is, the company by company disclosure.

When the word "chilled" is used concerning foreign direct investment, it means simply that a foreign investor, confronted with the question of whether or not to make public information that would be beneficial to a competitor, may decide that he would rather not go forward with an investment rather than have to make that information available to the competitor.

The CHAIRMAN. For example?

Mr. RICHARDSON. It might be information that he is proposing to build a greenfield plant in the United States to enter, let us say, a line of business making tennis rackets that are now made only in Taiwan. He might not want the competitor who has the plant in Taiwan to be made aware of this, or what the costs involved are in the acquisition of land and so on.

That information is reported to the Government of the United States, and I would have to respectfully differ with the point made earlier by Mr. Pickens regarding the information he was required to report to the Japanese Government. The same kind of information, in at least as much detail, would have to be reported to the U.S. Government.

A detailed survey was made by the Treasury Department last year of all of the laws bearing on investment reporting to other countries. The level of, and detail of, investment reporting required in the United States is at least as high as it is anywhere else.

The suggestion has been made that well, maybe the Harkin-Bryant proposal would merely be catching up with other countries, insofar as it provides for company by company disclosure.

The fact is that no other country provides for it. All of them protect its confidentiality, and I think it is a practical consideration not only that there might be a chilling effect in the sense of deterring investment if disclosure were made, but that there would be some people—just as there are some people who cheat on their income tax returns—who would not report at all, or would not report fully if they thought the information was going to be disclosed.

So the issue, Mr. Chairman, is not an issue over the need of policymakers for information. The issue is solely over the question of

how best to get the fullest and most relevant information that will contribute to the policymaking process.

For that reason, Mr. Chairman, we do support the proposal by Senator Murkowski for the sharing of information by the Census Bureau with the Bureau of Economic Analysis. This would be useful in supplementing the enterprise-based information now reported to BEA by making available information on a plant level basis.

We also, however, support the position of the Commerce Department and the Executive Branch generally with respect to the undesirability of also automatically making this information available to the Committee on Foreign Investment of the United States, generally called CFIUS.

CFIUS is the agency of the U.S. Government that administers the Exon-Florio legislation enacted in the 1988 Omnibus Trade Act, amending the Defense Production Act. CFIUS has ample power to require any and all information relevant to its decisions under the Defense Production Act. With respect to broader policy issues, they are in the same position as others who have access to BEA information on a sector by sector basis on the level and source of foreign investment.

In general, Mr. Chairman, speaking for our Association, we are for any modification of existing reporting requirements that would improve the quality and completeness of the information made available to the United States Government about foreign investment in the United States. If it makes sense, we are for it.

The Harkin-Bryant proposal does not make sense, as Mr. Jasinowski repeatedly sought to make clear. It serves no identifiable purpose in the interest of U.S. policymaking, or the administration of U.S. law.

Finally, Mr. Chairman, on the issue of reciprocity that you touched on, I think it ought to be emphasized that the U.S. has done well over the years with a policy of according national treatment to foreign companies and insisting on national treatment for our companies abroad.

This has been the long-term basis on which we have consistently argued in favor of the opportunities for U.S. investment abroad. With the exception of Japan, we are now a larger direct investor in all the countries that have direct investment in the United States than they are in the United States. We are a far larger investor in Great Britain than Great Britain is in the U.S., and so it goes.

In the case of Japan, it is, as Mr. Jasinowski emphasized, an objective of the Administration to try to reduce the informal structural impediments that now stand in the way of U.S. direct investment in Japan. Again as far as we in the Association are concerned, we would be in favor of anything along those lines that would actually make sense.

The problem in part, again, is that the U.S. savings rate of course is far lower than the Japanese savings rate. Quite apart from all of the ties among Japanese companies, there is a lot of money in Japan available to invest in whatever looks attractive.

But in general, it is not obvious that this objective of accessibility for U.S. investment in Japan would be furthered by the Harkin proposal. On the contrary, we think that, as Senator Danforth's

last or next-to-last question points out, it is at least a move away from the traditional U.S. policy.

We believe the United States should be perceived as favoring the freest possible opportunities for U.S. investment in other countries—breaking down those barriers; seeking the elimination of the kinds of reviews and screening procedures that they have.

This was for a time a major concern between the United States and Canada, and we did succeed in getting the Canadians to back down to a significant extent on those requirements. I think we should be leaning on the French now to reduce the barriers intrinsic to their screening processes.

I think our leverage, Mr. Chairman, is stronger to the extent that we adhere consistently to a position of national treatment. In this instance the Harkin proposal would move in the other direction by seeming to imply, because of the rhetoric surrounding it, if not the provisions of the legislation itself, that we were prepared to move in the direction of restriction.

My final thought, Mr. Chairman, appears in my prepared statement. It is a quotation from President John F. Kennedy from a speech he gave in Germany in 1963.

He said that, "On Cape Cod we have a saying that 'the rising tide lifts all the boats'." And we believe that the worldwide freedom of this tide to move in response to opportunities for productive returns on investment contributes in the long-term to lifting all the boats. The United States should continue to exercise leadership to that end, as we traditionally have.

Thank you, Mr. Chairman.

[The statement and questions and answers follow:]

WRITTEN STATEMENT
of
ELLIOT L. RICHARDSON,
CHAIRMAN
of the
ASSOCIATION FOR FOREIGN INVESTMENT IN AMERICA
ON
S. 289
THE FOREIGN OWNERSHIP DISCLOSURE ACT OF 1989
and
S. 856
before the
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
WASHINGTON, D.C.
JULY 11, 1989

I. INTRODUCTION

Good morning, Mr. Chairman. My name is Elliot Richardson. I am a partner in the international law firm Milbank, Tweed, Hadley & McCloy. I am also the Chairman of the Association for Foreign Investment in America ("AFIA"), on whose behalf I appear before you today.

AFIA was founded as a partnership of foreign investors, U.S. multinational corporations, and state and local governments concerned with maintaining and expanding freedom of investment in response to market forces. Like U.S. industry generally, AFIA's members have two principal and interrelated concerns: they understand the need to attract foreign investors to the United States to meet this country's requirements for investment capital, and they are concerned that the erection of barriers to foreign investment in this country would lead to

reciprocal action by other governments with serious adverse effects on U.S. competitiveness and on the ability of American business to invest abroad.

Since AFIA was founded a little more than a year ago, I have had the opportunity to testify before the Senate and House on the role and contributions of foreign investment to the U.S. economy. I take it from your letter of invitation, Mr. Chairman, that today's hearing is focused primarily upon the adequacy and usefulness of the information the U.S. government currently collects and by which it evaluates our international investment policies; therefore, I shall focus my testimony largely on this subject. However, I will first briefly review the U.S. policy toward foreign direct investment in order to place S. 289 and S. 856 in context. I should also like to supplement my testimony of March 24, 1988 before this Committee by updating significant data on the level and extent of foreign investment out of and into the United States. I shall then turn to data collection and particularly the issues raised by S. 289 and S. 856. Because I believe that these bills may have the effect of changing the traditional U.S. policy toward foreign investment, I shall close with a brief review of the reasons why that policy should be maintained.

II. U.S. POLICY TOWARD FOREIGN DIRECT INVESTMENT

The U.S. government has traditionally welcomed foreign investment 1/ and has consistently negotiated for the freedom of Americans to invest abroad. The government's basic policy is to accord national treatment to foreign investors; that is, we treat foreign investors the same as U.S. investors. The U.S. government provides neither incentives nor disincentives to investment flows; neither does the government intervene in the investment decisions of individual companies. The U.S. also demands that other countries accord American investors national treatment.

The basic premises of U.S. policy toward foreign investment are: 2/

-- International investment generally results in the most efficient allocation of economic resources if it is allowed to flow according to market forces.

-- There is no basis for concluding that a general policy of actively promoting or discouraging international investment would further the U.S. national interest.

1/ Federal Collection of Information on Foreign Investment in the U.S.: Hearing before the Senate Committee on Commerce, Science and Transportation, 100th Cong., 2nd Sess. 39 (1988) (statement of Robert Ortner, Under Secretary of Commerce); Disclosure of Foreign Investment in the United States: Hearing before the Subcommittee on Telecommunications, Consumer Protection, and Finance of the House Committee on Energy and Commerce 91 (1986) (testimony of Stephen J. Canner, Dir., Int'l Investment Offc., Treasury Dep't).

2/ Statement by the President on International Investment Policy, Sept. 9, 1983.

-- Unilateral U.S. government intervention in the international investment process might trigger actions by other governments with adverse effects on the U.S. economy and U.S. foreign policy.

-- The U.S. has an important interest in seeking to assure that American investors abroad receive national treatment.

The U.S. international investment policy is rooted in national self-interest. We have maintained an open door policy not as an accommodation to foreigners or their governments, but because of the benefits that foreign investment brings to our economy. The United States views such investment as a means of growth, a way of introducing new technologies and management skills, providing jobs, and increasing productivity.

The U.S. furthermore recognizes that as the world's largest international investor, it must accord to other nations the same rights and freedoms that it has negotiated for itself, with fair success, over the last 40 years or more. Since the Second World War, the U.S. has been the leading proponent of trade and investment liberalization and it has vigorously pursued its objectives in both bilateral and multilateral forums. It is largely owing to the efforts of the United States that the current round of GATT negotiations includes -- for the first time -- the consideration of investment measures in addition to its traditional focus on trade and tariff measures. Congress endorsed this initiative in § 1102(b)(1)(B)(ii) of the Omnibus Trade and Competitiveness Act of 1988, which authorizes the

President to negotiate the elimination of trade distorting restrictions on international investment.

III. LEVEL AND EXTENT OF INTERNATIONAL INVESTMENT

Mr. Chairman, I think it would be useful to take a few moments to provide the Committee with some of the most recent data on the level and extent of investment out of and into the United States. As of the first quarter of this year, U.S. investors had some $1.29 trillion invested abroad 3/ while foreigners have invested $1.84 trillion in the United States. 4/ Tables 1 and 2 show U.S. and foreign holdings, respectively, by major categories. It should be noted that nonofficial holdings represent the bulk of internationally-held assets. In turn, these private investments are divided into two categories: "direct" (investment in real estate or ownership of 10 percent or more of the equity or its equivalent in a business) and "portfolio" (all other) investment.

3/ Dep't Commerce, News Release, "Summary of U.S. International Transactions: First Quarter 1989" (June 13, 1989); Dep't Commerce, News Release, "U.S. Net International Investment Position, 1988" (June 29, 1989).

4/ Id.

A. U.S. Investment Abroad

1. U.S. Direct Investment

For many years, but particularly since the Second World War, U.S. business has invested substantial sums abroad. These investments currently total about $330 billion, as they are normally measured, i.e., based on their "book" value (the price paid when the asset was acquired). 5/ This tends to understate their value somewhat. The U.S. Chamber of Commerce has estimated that, as of the end of 1987, the market value of U.S. overseas assets exceeded the value of foreign-held assets in the U.S. by about $200 billion. 6/ Since most of the $343 billion in foreign direct investment in the U.S. was made recently, 7/ its book value more closely reflects its market value. By market value, Americans still have significantly more direct investment abroad than is invested in the United States.

2. U.S. Portfolio Investment Abroad

Portfolio investment consists of all privately-held assets other than direct investments, and includes both debt and equity holdings. Much of these holdings are sensitive to interest-rate differentials and can easily be transferred internationally. These portfolio investments constitute about 70 percent of all U.S. private foreign investment abroad.

5/ Id.

6/ W. MacReynolds, "Facts and Fallacies about Foreign Investment," U.S. Chamber of Commerce Policy Working Papers 3 (June 1988).

7/ Dep't Commerce, Survey of Current Business 40-41 (June 1988) [hereinafter Survey].

B. Foreign Investment in the U.S.

1. Foreign Direct Investment

Although there has always been foreign investment in the United States, it began to surge in the early 1980s. 8/ This timing is worth noting. Although many people associate the increase in foreign purchases of U.S. assets with the relatively lower value of the dollar since late 1985, the surge in foreign investment actually began during the time that the dollar's value was rising relative to foreign currencies, the 1981-1985 period. This tends to confirm that it is the strength of the U.S. economy, rather than the weakness of the dollar, that has attracted foreign investors. Although it has grown rapidly, the $343.3 billion foreign direct investment in the U.S. still constitutes only about 5 percent of U.S. assets. Thus, in relative terms -- which I think is the appropriate way to analyze this issue -- foreign investment has remained fairly small.

2. Foreign Portfolio Investment

Private portfolio holdings of U.S. assets by foreigners consist of a mix of public and private securities, deposits with banks in the United States, and similar investments. (The public securities include U.S. Treasury notes and debt instruments issued by other governmental authorities.) The largest

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8/ Id.

accumulation of foreign portfolio investment is in bank deposits, followed by holdings of federal government securities other than those issued by the U.S. Treasury. 9/

As of March 31, 1989, private portfolio holdings by foreigners was almost $1.2 trillion. 10/ These liquid and interest-sensitive assets have accounted for about 75 percent of all private foreign investment in the United States throughout this decade. 11/

C. Relative Shares of Inward and Outward Investment

All OECD countries have businesses with investments in America. See Table 3. The British are by far the largest overseas investing group in this country, with about $111.2 billion or 32.4 percent of total direct foreign investment in the United States as of April 1, 1989. 12/ American investment constitutes 43.3 percent of all foreign direct investment in the United Kingdom. 13/ The Japanese recently became the second largest investing nationality, with almost $55 billion,

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9/ See "U.S. Net International Investment Position 1988," supra note 3.

10/ Id.; Dep't Commerce, "Summary of U.S. International Transactions: First Quarter 1989," supra note 3.

11/ See Survey, supra note 7, at 40-41.

12/ See Survey, supra note 7, at 83; Dep't Commerce, Bureau of Economic Analysis, unpublished data.

13/ Telephone interview with the Embassy of Great Britain, Washington, D.C. (July 10, 1989).

comprising 16.0 percent of total foreign direct investment. 14/ American investors are the largest foreign investors in Japan with 49 percent of the total foreign direct investment in 1988, 15/ although it is of course true that the total foreign direct investment in Japan is disproportionately small as a percentage of GNP relative to all other OECD countries. The Dutch are the third largest investing nationality, with $50.3 billion or 14.6 percent of total foreign direct investment in the U.S. 16/ American investors, on the other hand, are by far the largest investors in The Netherlands. 17/ In fact, 15 percent of all Dutch manufacturing jobs are in American-owned facilities. Canadian investors are in fourth place, with $27.7 billion or 8.1 percent of the total foreign investment in the U.S. 18/ This compares with American investment in Canada in 1988 comprising 69.2 percent of its total foreign investment. 19/ What these figures make clear is that foreign investment is a

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14/ See Survey, supra note 7, at 83; Dep't Commerce, Bureau of Economic Analysis, unpublished data.

15/ Telephone interview with the Embassy of Japan, Washington, D.C. (July 7, 1989).

16/ See Survey, supra note 7, at 83; Dep't Commerce, Bureau of Economic Analysis, unpublished data.

17/ Telephone interview with the Embassy of The Netherlands, Washington, D.C. (July 7, 1989).

18/ See Survey, supra note 7, at 83; Dep't Commerce, Bureau of Economic Analysis, unpublished data.

19/ Telephone interview with the Embassy of Canada, Washington, D.C. (July 7, 1989).

two-way street. Indeed, the U.S. share of foreign investment in each of the countries is larger than that country's share of foreign investment in this country.

Despite the large U.S. foreign direct investment presence in OECD countries, once prevalent concerns about American businesses' political interference in their internal affairs have proven to be illusory. Of course, American companies have pursued their own economic self-interest within the framework of each host country's political system. This is distinctly different, however, from dominating the political destiny of these great trading partners. In fact, despite the large U.S. foreign direct investment presence in OECD countries, American businesses' political interference in their internal affairs has proven to be a non-issue. Similarly, there is no reason to believe that the activities of foreign businesses here, representing an even smaller proportion of the U.S. economy, will lead to the loss or diminution of our political or economic sovereignty.

IV. S. 856

Mr. Chairman, I would now like to turn to S. 856, introduced by Senator Murkowski. As I understand it, the bill purports to do two things. Section 1 of the bill would give the Commerce Department's Bureau of Economic Analysis ("BEA") access to data collected by the Census Bureau. Section 2 would give the President or his delegate -- presumably the interagency Committee

on Foreign Investment in the United States ("CFIUS") -- access to individual company data furnished to BEA to assist in monitoring the impact of foreign investment and coordinating implementation of United States policy on such investment.

Mr. Chairman, AFIA supports the intent of Section 1 of this bill but opposes Section 2.

A. Section 1

The recent concern in the U.S. regarding foreign investment has produced numerous exaggerations and misperceptions about the scope of foreign ownership of American industry, but it has also raised some questions as to the quality and completeness of the data on which policymakers and the general public rely. Our own study of this issue convinces us that, as Under Secretary Darby testified earlier at this hearing, the BEA data collection system is second to none. It is worth noting in passing that the International Monetary Fund recommends that countries pattern their foreign direct investment data collection systems after BEA's or that of The Netherlands. But few things are so good that they cannot be improved upon, and we commend the Committee for addressing possible improvements of the data collection system at this hearing. I would like to take this opportunity to restate AFIA's willingness to work with the Congress and to renew our commitment to work with the Administration to identify additional data needs and to address public policy concerns.

The effectiveness and completeness of the work of BEA can doubtless be enhanced if it has available relevant data generated elsewhere in the government. The Census Bureau, which is also part of the Commerce Department, collects comprehensive data concerning all business establishments, including foreign-owned business establishments in the United States. In the past, Census actually published data regarding foreign investors but ceased to do so in 1981 because of budgetary constraints.

Section 1 of S. 856 would allow BEA employees to use Census data -- subject to specified safeguards -- in furtherance of the purposes of the International Investment and Trade in Services Survey Act ("IITSSA"). Access to Census data would allow BEA to check the number of foreign investors it has identified against a master list that Census uses for its data collection. Over time, it is also possible that BEA would be able to publish its analysis of the operations of foreign investors in this country with greater industry and regional detail. This could be accomplished without jeopardizing the confidentiality of the responses of individual business respondents. AFIA supports this objective as a means of enhancing the adequacy and accuracy of the data on foreign direct investment that BEA collects, analyzes, and publishes.

It is appropriate that the government's two major statistical collecting agencies -- BEA and Census -- share data on foreign direct investment on terms that are consistent with the mission of each agency; Census will continue to maintain the

most complete set of data on the U.S. economy, including the operations of foreign-owned business enterprises, while BEA has the principal responsibility for collecting and publishing information on foreign direct investment.

B. Section 2

In contrast to the laudable intent of the first section, Section 2(b) is both unnecessary and counterproductive. The public policy purposes that Section 2 seeks to serve would in fact be undermined by its enactment.

We are unaware of any request by CFIUS for access to individual returns filed by foreign investors with BEA or Census. Indeed, as Under Secretary Darby testified this morning, the Administration is strongly opposed to such a release of confidential information. AFIA shares these concerns and similarly opposes this aspect of S. 856.

It appears likely that CFIUS would be the President's delegate for purposes of Section 2(b) of the bill and, therefore, the recipient of individual returns filed with BEA and Census. As the Committee is aware, CFIUS was by Executive Order delegated authority under Section 5021 of the Omnibus Trade and Competitiveness Act of 1988, amending the Defense Production Act ("Exon-Florio"), to review and, if necessary, investigate mergers, acquisitions, and takeovers of U.S. businesses which result in control by a foreign person and which threaten to impair national security. CFIUS also has continuing authority

under Executive Order 11858 20/ of May 7, 1975, as amended, to monitor the impact of foreign investment in the United States.

However, the efficient functioning of CFIUS would in no way be enhanced by access to an individual investor's BEA and Census returns. Among other things, the Defense Production Act provides CFIUS with the power to compel companies to furnish it the specific information it requires.

There are broader public policy reasons that strongly argue against access to individual returns and, in fact, would be counterproductive to IITSSA's purposes. The value of BEA's publications to policymakers and the general public depends upon the accuracy and completeness of the data provided by business firms investing in the U.S. The integrity of such data depends, in turn, upon the assurance given to individual firms that the information they supply will be held in strict confidence and published only in aggregated form to prevent disclosure of business confidential data. If, however, such data, and the records, documents, reports, and so forth in which they are incorporated, is made available on a more widely disseminated basis, the assurance of confidentiality is fundamentally compromised.

In light of these considerations, AFIA believes that Section 2(b) of S. 856 is unnecessary and may be prejudicial to

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20/ Exec. Order No. 11858, 40 Fed. Reg. 20,263 (1975), as amended by Exec. Order No. 12188, 45 Fed. Reg. 989, as amended by Exec. Order 12661, Dec. 29, 1988, 54 Fed. Reg. 779.

the proper functioning of BEA under IITSSA with those of CFIUS. We therefore oppose that provision.

Section 2(a) of S. 856 would expand the purposes of IITSSA specifically to include the collection and use of information on direct investment owned and controlled directly or indirectly by foreign governments. Under existing law, collection of such information would be undertaken as part of the already stated purpose of the legislation "to collect information on international investment."

For the reasons given above, we believe that such alignment is not necessary for the effective function of CFIUS, and that it would be prejudicial to the work of the BEA. We therefore oppose that provision.

V. FOREIGN OWNERSHIP DISCLOSURE ACT OF 1989, S. 289

Mr. Chairman, AFIA firmly believes that the U.S. government should have all the data it requires, on a timely basis, to satisfy its policy needs concerning foreign investment in the United States. We believe that foreign investment has become and will continue to be an important component in the U.S. economy, especially as the internationalization of our economy proceeds. For this reason, we would support those proposals that identify any policy needs that are unmet by the existing U.S. government data base on foreign investment and that provide reasonable means of meeting those needs. Those criteria do not appear to have been satisfied in the case of Senator Harkin's bill -- S. 289, the "Foreign Ownership Disclosure Act of 1989."

We oppose this bill because we believe --

The bill is discriminatory -- it singles out certain investors on nationality grounds alone and specifies unfair reporting requirements that only they must satisfy;

The bill is burdensome -- it requires foreign investors to provide data that may be difficult to obtain and it raises difficult compliance issues;

The bill is anticompetitive -- it requires foreign investors to provide confidential business information in a form that damages their competitive position and could provide their competitors with significant advantages;

The bill is bad public policy -- it is inappropriate and counterproductive to erect potential barriers, especially at this time to foreign investment, in the United States;

The bill conflicts with existing U.S. international obligations -- it is contrary to historic and ongoing commitments the U.S. has made to liberalize the international flow of investment;

The bill is contrary to the interests of U.S. multinationals -- it jeopardizes the status of current and prospective overseas investments by U.S. multinationals;

The bill is redundant -- much of the data it would collect is already collected by the U.S. government; and, last but not least,

The bill would not achieve its intended purpose -- it would not improve the U.S. government data system on foreign direct investment.

A. The Bill Is Discriminatory

The public registration requirement proposed in Section 2(a)-(d) would violate long standing U.S. policy to accord national treatment to foreign investors, under which foreign investors are treated the same as U.S. investors. The establishment of a public registry for foreign investors, and only for foreign investors, is discriminatory per se.

B. The Bill Is Burdensome

Perhaps the most burdensome aspect of the bill is that it requires foreign investors to file information based on a 5 percent equity stake in a U.S. business enterprise. This assumes, of course, that the foreign investor controls the U.S. business and can compel it to supply the required information. In reality, the foreign investor may not have access to and, therefore, be in a position to comply with S. 856's requirements.

Another burden contained in the bill is the requirement that foreign investors provide the market value of the direct investment. But no definition of "market value" is provided. Other than the original purchase price, there is no way to definitively determine, with the passage of time, what the market value of a property or business enterprise might be, short of actually putting the property or asset up for sale. The bill,

therefore, requires information which may be beyond the control of the investor to reasonably ascertain.

The foreign investor with a "controlling interest" would also have to incur the costs of developing and providing an English translation of the requested information that is made available in his country. This could be burdensome if it is not customarily the investor's practice to prepare such an English translation. At the very least, it sends the wrong signal to foreign investors concerning the investment climate in the U.S.

C. The Bill Is Anticompetitive

The information required of a foreign investor with a "controlling interest" may be extremely sensitive to his operations.

This information includes the following:

(i) A balance sheet and income statement;

(ii) A statement of changes in financial condition;

(iii) A statement of sales, assets, operating income, and depreciation by industrial segment; and

(iv) The identity and nationality of each director and executive officer.

It is not clear what is meant by "industrial segment," which is likewise not defined in the bill. Thus, for a single plant or site operation, providing this type of information would clearly disadvantage the foreign investor against competitors should it ever fall into their hands. The data provided go to the heart of the business operation and are rather sensitive. Even a

multiplant operation might be compelled to provide the requested information in a manner that would similarly disadvantage the foreign investor with his competitors.

There is no stated or, indeed, apparent public policy need served by requesting this type of detailed information. There is a real danger, however, that the business confidential information at the level of detail specified in the bill could be publicly disclosed. Should that occur, the operations of the foreign investor in the U.S. would be badly compromised.

D. The Bill Is Bad Public Policy

As the U.S. government has consistently maintained for over 40 years, it is in the public interest to encourage the most efficient use of the world's capital resources. This objective can generally be achieved when capital is free to move internationally, to the fullest extent practical, in response to market forces. By imposing added burdens and risks on foreign direct investment in this country, S. 289 would contravene the accomplishment of this goal. By doing so, it would deny the United States the many benefits it receives as a result of international investment.

It also should be emphasized that, for the near term, the U.S. economy will need to be a net importer of investment capital until its external and internal accounts are brought under greater control. This process will take time to accomplish, since any sudden reductions in the U.S. current account deficit could depress the economies of many of our

trading partners, while too rapid a reduction in our fiscal deficit might do the same to the U.S. domestic economy. Thus, we must move cautiously toward that time when the U.S. -- as the leading economy in the world -- once again resumes its role as a net creditor nation.

E. The Bill Conflicts With Existing U.S. International Obligations

I noted earlier in my testimony how, since the end of the Second World War, the U.S. has attempted to liberalize worldwide policies affecting the international movement of capital. We have accomplished this through bilateral and multilateral negotiation, particularly in the framework of the GATT, the OECD, and G-7 economic summits. Our efforts to break down foreign barriers to American investment have met with a fair degree of success. As evidenced by the substantial American direct investment abroad, the U.S. government has made it easier for American businesses to invest worldwide, as well as reducing the risks once established.

S. 289 goes against the flow. It would violate the U.S.' historic commitment to national treatment. It would invite other nations to take similar measures aimed at American investors. And it could precipitate a protectionist trend toward the closing of world markets to the international movement of investment capital.

F. The Bill Is Contrary to U.S. Business Interests

U.S. multinationals have developed a major stake in the global economy over the past 45 years. Their ability to accomplish this was the direct result of the support they received from our government. Now the overseas investments of those U.S. business enterprises generate major revenue returns, providing the parent companies with income streams out of which they have the means to reinvest, expand productive capacity, retire debt, or increase dividend payments to stockholders. All of these transactions are beneficial to the American economy. S.289 casts a shadow upon the unimpaired continuation of these benefits.

G. The Bill Is Redundant

The reporting requirements of S.289 would be in addition to those that foreign investors must comply with pursuant to IITSSA. BEA already collects much of the information that S. 289 would require. This includes information on the operating performance of U.S. affiliates of foreign parents, such as income, sales, operating income, profits, taxes paid, assets and liabilities, levels of employment, total compensation paid, spending on property, plant and equipment, R&D spending, imports and exports, and similar types of information. The basic difference is that BEA publishes this information in aggregate form and does not disclose information about individual business enterprises.

H. The Bill Would Make Confidential Business Information Widely Available

Section 2(1)(2) would make the data collected under this bill available to the following groups:

1. Officials or employees designated to perform functions under the Act, including consultants and persons working under contract.
2. Committees or subcommittees of the Congress.
3. Officials and employees of the General Accounting Office.
4. A single agency in each State; and
5. Persons performing qualified research.

By any measure, these groups represent a large and widely-spread audience to whom confidential business information would be circulated. Providing this information to such a wide audience would erode the integrity of our statistical system.

I. The Bill Would Not Achieve Its Intended Purpose

The purported purpose of S. 289 is to improve the data base the U.S. government now maintains on foreign direct investment in the United States. It attempts to accomplish this by setting up a registry of foreign investors that would be available to large numbers of people. The risk of public disclosure could very well have the opposite outcome. It could result in foreign investors making every effort to provide less, rather than more, information about their operations in the U.S. Guaranteeing anonymity to businesses and persons who respond to all U.S. surveys is also the foundation upon which the U.S. government has built its current statistical programs. Finally, some foreign investors might also be tempted not to report at

all, while others might divert investments to other host countries, rather than risk public disclosure of business confidential information.

VI. THE TRADITIONAL U.S. POLICY SHOULD NOT BE CHANGED

A. The U.S. Is a Beneficiary of Foreign Investment

1. Foreign Investment, Like Domestic Investment, Promotes Real Growth

Like domestic investment, foreign investment promotes real growth and increases the competitiveness of U.S. industry. It adds to the industrial capacity of the economy by expanding the nation's stock of new plants and equipment. This is particularly important now since we are operating at the highest levels of capacity utilization in 8 years. 21/ In order to continue to grow domestically and to exploit our comparative advantage in the global marketplace, and thereby to increase our international market share, we need to expand our industrial base. This, of course, is in large measure dependent upon the availability of investment capital at reasonable interest rates.

We are, moreover, a beneficiary in another way of foreign acquisitions of U.S. enterprises. Just as U.S. shareholders generally receive premium prices as a result of domestic acquisitions, they also receive premium prices from foreign purchasers. These funds, in turn, are usually

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21/ Board of Governors, Federal Reserve System, News Release, "Capacity Utilization Manufacturing, Mining, Utilities and Industrial Materials" (June 15, 1989).

reinvested in the U.S. economy, and help to expand America's industrial base.

2. Foreign Investment Helps Keep Domestic Interest Rates Down

At least until the budget deficit is eliminated or substantially reduced, foreign investment will continue to exert downward pressure on U.S. interest rates. Lower interest rates benefit the U.S. economy, encouraging domestic business expansion and the creation of new jobs. A well-known economist has estimated that real U.S. interest rates would have risen 3.5 to 5.5 percent in the absence of the surge in foreign investment we have experienced since 1981. 22/ These higher interest rates would have serious adverse consequences for the American economy and would almost certainly precipitate a recession.

3. Foreign Direct Investment Employs Almost 3.2 Million Americans

As of the end of 1987, foreign direct investment employed almost 3.2 million Americans. 23/ Some is "greenfield" investment, such as the new Japanese auto plants in Tennessee and Ohio. A larger portion of foreign investment results from the acquisition of existing enterprises. The employment effects of foreign direct investment have long been debated and are the

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22/ S. Marris, Deficits and the Dollar 44, 140-41 (rev. ed. Aug. 1987).

23/ Dep't Commerce, News Release, "Commerce Department Releases Results of 1987 Benchmark Survey of Foreign Direct Investment" (June 27, 1989) [hereinafter Benchmark].

subject of a recent study. 24/ Let it suffice to say that employment effects can be measured in two ways: jobs created and jobs saved. While greenfield investment represents jobs created, as does the expansion of an acquired enterprise, jobs saved are more difficult to measure since one must guess at what might have happened in the absence of a particular investment.

The manufacturing sector, which has had the greatest concentration of foreign direct investment in America does, however, reveal some interesting contrasts in employment trends. While employment overall in U.S. manufacturing declined 6.4 percent between 1980 and 1987, 25/ employment by U.S. affiliates of foreign firms rose 37 percent in the same period. 26/ This suggests that many blue-collar jobs would have been lost but for foreign investment. One example is Bridgestone's acquisition of Firestone. Several years ago the once-thriving Firestone plant in La Vergne, Tennessee, faced a shutdown. Almost 400 people already had been laid off. Further reductions were imminent. Bridgestone purchased the company and breathed new life into the plant.

24/ N. Glickman & D. Woodward, The New Competitors: How Foreign Investors Are Changing the U.S. Economy 1989.

25/ Economic Report of the President 1989 356 (Jan. 1989).

26/ Dep't Commerce, Foreign Direct Investment in the United States (various issues 1981-1987); Benchmark, supra note 23.

4. Foreign Direct Investment Facilitates the Introduction of New Technologies and Management Practices

In a world where the U.S. is struggling to maintain a competitive edge, access to technology from abroad is highly desirable. Along with foreign investment come new technologies and management techniques which strengthen America's industrial base. Foreign investors, who are generally among the most successful companies in their home countries, are often at the cutting edge of new technologies and management practices. One illustration is that research and development ("R&D") spending by U.S. affiliates of foreign firms has increased at a considerably faster rate than the average for all U.S. industry. 27/

5. Foreign Direct Investment Benefits U.S. Consumers by Increasing Competition

Foreign direct investment stimulates competition, which directly benefits the U.S. consumer through lower prices and a wider selection of goods. In order to compete, industries must cut costs, improve products, and satisfy the consumer. Without foreign investment, U.S. consumers would have to pay higher prices for lower quality goods.

6. Foreign Direct Investment in the United States is the Other Side of the Coin to U.S. Freedom to Invest Abroad

The U.S. is a major foreign investor with more to gain than to lose from freer investment regimes internationally.

27/ Dep't Commerce, Foreign Direct Investment in the United States, supra note 26; Census Bureau, Statistical Abstract of the United States 1988 567 (1988).

Foreign investment is not a zero-sum game: both the international economy and U.S. domestic economy stand to benefit from the growth effects of freer, more efficient capital allocation.

In our negotiations with developing countries with large external debt, the U.S. has emphasized time and again the virtues of an open investment policy that creates a hospitable environment for foreign capital. A retreat by the U.S. from this position would undercut our efforts to continue to promote this policy abroad. We cannot have it both ways.

7. Foreign Direct Investment Expands U.S. Access to Foreign Markets

When foreign businesses invest in this country, they bring with them access to markets in their home countries. This access to foreign markets is also linked to the home market business network of foreign parent companies. It is, therefore, not surprising that foreign-owned manufacturing affiliates in the U.S. exported at a significantly greater rate than all manufacturers. See Table 4. Further, and perhaps contrary to the general perception, imports by U.S. manufacturing affiliates of foreign firms have risen less rapidly than did overall U.S. imports of manufactures. See Table 5.

B. Glaxo Inc.: A Case Study of the Benefits of Foreign Direct Investment in the U.S.

Mr. Chairman, I have just outlined in general terms some of the benefits of foreign direct investment to the U.S. economy. I would like to offer one case study of these benefits, that of Glaxo Inc. ("Glaxo"), the Research Triangle Park, North Carolina, pharmaceutical manufacturer.

The British-based Glaxo Holdings was a relative latecomer to the U.S. market, purchasing the small company Meyer Laboratories in Fort Lauderdale, Florida in 1978. At the time of purchase, Meyer Laboratories had annual sales in the U.S. of $10 million. Since that time, Glaxo's annual sales have grown more than a hundredfold from $11 million in 1979 to $1.274 billion in 1988. Glaxo today has 3,863 U.S. employees with a total corporate salary and fringe benefits payroll of $163 million. Virtually all of Glaxo's employees, including its CEO, are Americans, as is Glaxo Holdings' Chief Managing Director in London.

This dramatic growth over the last decade has been accompanied by a vigorous capital investment program in the U.S., primarily for research, development, and production. As of May 31, 1989 the firm's total capital investment grew to a cumulative total of $364 million. Funding for capital projects is planned to continue at a strong pace, including new research and development facilities comprising over one million square feet, and will approximate $608 million additional investment for the period June 1989 through June 1993. Glaxo's success in investing

in the U.S., with its climate of free enterprise and economic opportunity, has created several important benefits for the national, state, and local communities in which Glaxo participates.

At the national level, the federal government has benefited from tax revenues both on Glaxo's corporate income and on payroll taxes for Glaxo's several thousand employees. Glaxo's sales through wholesalers to pharmacies and hospitals have similarly generated substantial federal tax revenues from business, income, and payrolls.

Within the State of North Carolina, Glaxo has become one of the leading corporate taxpayers. Its 2,318 employees in the state pay substantial state income taxes, as well as sales taxes. Within the greater Raleigh-Durham-Chapel Hill area and its environs surrounding Research Triangle Park, Glaxo has relocated about 500 employees from all sections of the U.S. Most of the employees are scientists, members of learned professions, or other degree holders, and their influx has made a significant contribution to residential real estate and other aspects of the local economy.

The business success of Glaxo and participation in that success by the national, state, and local communities, exemplifies how foreign investment in the U.S. can provide excellent rewards for all parties.

C. The Continued Health of the U.S. Economy Is Dependent Upon Foreign Investment

Three factors tend to make the U.S. economy dependent upon foreign investment. First, the record federal budget deficits have been funded by the sale of government securities. The national debt has almost tripled since 1980 28/ and there is no end in sight to annual budget deficits. During the same period, the U.S. economy grew annually in nominal terms by 7.5 percent. 29/ The combined effect of private and public borrowing, in turn, has been to attract a substantial inflow of foreign capital into the United States. Second, this country's international trade deficit has shifted an unprecedented volume of dollars flowing abroad. 30/ These dollars do not simply evaporate. Instead, many are invested in dollar-denominated assets. One of the most attractive places for this, of course, is in the United States. Third, the U.S. has relatively low domestic savings. 31/ Unless we are able to meet investment needs from our savings, we will remain dependent upon foreign

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28/ See Economic Report of the President 1989, supra note 25, at 397.

29/ Id. at 308; Dep't Commerce, New Release, "Gross National Product: First Quarter 1989 (Preliminary) Corporate Profits: First Quarter 1989 (Preliminary)" (May 25, 1989) [hereinafter First Quarter Statistics].

30/ See Survey, supra note 7, at 40-41.

31/ Economic Report of the President 1988, supra note 25, at 100; J. Frankel, "International Capital Flows and Domestic Economic Policies," in The United States in the World Economy 609 (M. Feldstein ed. 1988).

capital. It would be preferable, of course, to reduce our dependence on foreign capital; but given our current situation, we would be far worse off without it.

1. The Federal Budget Deficit Has Been Funded by Borrowing and Attracting Large Inflows of Foreign Investment into the U.S.

Mr. Chairman, for 96 consecutive months the U.S. economy has expanded, the longest peacetime period of growth in the history of the U.S. economy. 32/ In 1988, the economy's real output rose by 3.9 percent, 33/ with about 2.5 million jobs added to the work force. 34/ The inflation rate -- as measured by the GNP price deflator -- remained in the 3 to 4 percent range, less than half the rates at the outset of this decade. 35/

During this period, gross private investment has averaged 15.7 percent of GNP. 36/ At the same time, the federal government's annual budget deficits have been as high as 6.26 percent of GNP, reaching levels in excess of $200 billion a year for a number of years until the recent decline brought about by the balanced budget initiative. 37/

32/ The trough of the 1981-1982 recession occurred in Nov. 1982.

33/ Dep't Commerce, "First Quarter Statistics," supra note 29.

34/ Dep't Commerce, Survey of Current Business S-9 (Apr. 1989).

35/ See Dep't Commerce, "First Quarter Statistics," supra note 29.

36/ Economic Report of the President 1989, supra note 25, at 340; Dep't Commerce, "First Quarter Statistics," supra note 29.

37/ Id. at 337.

It bears repeating in this context that the budget deficit has been funded by the sale of government securities which have competed with private borrowers for available funds. In a sense, this competition for investment capital has acted like a vacuum, attracting all available capital, both domestic and foreign. Without foreign investment in the United States, interest rates would have risen dramatically, as the federal government would be competing with the U.S. private sector for a smaller pool of funds. 38/

2. The U.S. Trade Deficit Has Shifted Billions of Dollars Abroad Which Ultimately Return to the U.S.

Beginning in 1982 through 1988, the huge and persistent U.S. current account deficit has shifted nearly $700 billion abroad. 39/ Once overseas, however, the foreign owners of these dollars must put them somewhere. Eventually almost all these U.S. dollars will return to the American economy in one of three forms: direct investment; portfolio investment; or as purchases of U.S. exports.

3. The Domestic Savings Rate Is Insufficient to Provide the Capital Needed to Meet U.S. Investment Demands at Reasonable Interest Rates

Throughout this decade, the overall gross national savings rate in the United States has been insufficient to finance the demand for capital from the U.S. private and public sectors. From 1982 through 1988, gross national savings has

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38/ See supra note 22 and accompanying text.

39/ See Survey, supra note 7, at 40-41; "Summary of U.S. International Transactions: First Quarter 1989" (June 13, 1989).

represented about 13.5 percent of GNP, some 2.5 percentage points below the demand for capital in this country. 40/ This posed a dilemma for the U.S. economy. It is the essence of a dilemma that one must choose between two alternatives, and this was certainly the case with the need for investment capital. At the extremes, the two choices were that either the U.S. could have relied upon inadequate domestic funding, which surely would have meant less growth, higher interest rates, more unemployment, a greater rate of inflation, and a less competitive U.S. economy in the global marketplace; or, the U.S. could borrow to meet its need for capital, leading to greater domestic expansion, more jobs, lower interest rates, lower inflation, and a more competitive economy in the global marketplace. The choice we as a nation made was the obvious one.

During this period of reassessment of U.S. policy toward foreign investment, we necessarily revisit the same dilemma. Until domestic savings increases, the United States will continue to be dependent upon foreign investment to meet our capital demands.

D. The U.S. Remains the Leader of the Western World and Has a Responsibility to Avoid Protectionism

Not too long ago, it was said that "when the U.S. sneezes, Europe catches a cold." This was an apt metaphor to describe the economic relationship between the United States and the rest of the industrialized world from 1945-1970 -- the

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40/ Economic Report of the President 1989, supra note 25, at 308, 340.

period of recovery from the Second World War. Although the economic gap has narrowed between the U.S. and the rest of the bloc of industrialized countries, the United States still has the largest economy and remains the greatest military power. For these and other reasons the United States is and will into the foreseeable future continue to be the natural leader of the western democracies. If anything, the need for this country to assert its leadership has never been greater.

In particular, American leadership at the multilateral level is still essential to the maintenance of liberal rules governing international investment. Under the principle of "standstill," which is fundamental to multilateral trade and investment negotiations, member countries are pledged to work to lower restrictions. If forward progress cannot always be gained, at least no backward movement should ever occur. The U.S. must continue to exercise its leadership both through example and hard bargaining in international forums. Legislation that would force disclosure of sensitive business information, extending across many or all sectors without reference even to a broadly defined national security, might be characterized as a sweeping repudiation of standstill.

At the multilateral level, the U.S. is currently engaged in two mutually reinforcing efforts to further liberalize investment regimes: the inclusion of Trade-Related Investment Measures, or TRIMs, in the Uruguay Round of GATT negotiations, and the initiative to strengthen the OECD's National Treatment Instrument.

1. U.S. Position in the Current GATT Round

The United States has been in the forefront of the effort to reduce barriers to international investment in the Uruguay round of multilateral trade negotiations. This effort is based on the proposition that trade-related investment measures can have the following trade restrictive and distorting effects:

-- Prevent, reduce, or divert imports by limiting the sale, purchase, and use of imported products;

-- Restrict the ability to export by home and third country producers; and

-- Inflate exports from a host country, thereby distorting trade flows in world markets. 41/

The effort to reduce these barriers is consistent with traditional U.S. investment policy.

The Uruguay Round marks the first time that GATT has considered TRIMs. Its recognition that TRIMs deserve the same liberalization as tariffs and other restrictive measures, which brings the organization's policy into concert with that of the United States, thus may be considered a solid achievement for this country's negotiators.

2. U.S. Position in the OECD

The OECD has begun to focus on a work program which includes: a strengthened National Treatment Instrument; better support for GATT negotiations on TRIMs; and more analytical support to understand positive and negative factors affecting investment flows to LDCs and to encourage a healthier investment

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41/ Submission of the United States to the Negotiating Group on Trade-Related Investment Measures 1 (June 1987).

climate in developing countries. The OECD recently concluded negotiations on two new codes to liberalize capital movements and financial services. The agreements which will enter into force next year, are the result of five years of fact finalizing and negotiation.

The Code of Liberalization of Capital Movements, of which the U.S. was a principal supporter, covers nearly all international capital movements, including direct investment, securities and non-securitized claims, bank credits and loans, foreign exchange, and personal capital transfers. 42/ The Code provides for the progressive abolition of restrictions on capital movements. 43/ In particular, the signatories undertake "to treat all non-resident-owned assets in the same way" and "to permit the liquidation of all non-resident owned assets and the transfer of such assets or of their liquidation proceeds." 44/

The U.S. is also in the forefront of States working to strengthen the OECD's instrument on National Treatment. The instrument states that "Member countries should . . . accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another Member country . . . treatment under their laws, regulations and administrative practices, consistent with international law and

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42/ Code of Liberalization of Capital Movements (OECD Oct. 1986).

43/ Id. art. 1.

44/ Id. art. 1(b)(i) & (ii).

no less favorable than that accorded in like situations to domestic enterprises . . . ." 45/

Finally, at the bilateral level, the United States has negotiated national treatment provisions in numerous Friendship, Commerce, and Navigation treaties and in all ten of the bilateral investment treaties we have signed. Most recently, the U.S./Canada Free Trade Agreement liberalizes capital restrictions, paving the way for increased American investment in our great friend to the north.

VII. CONCLUSION

Mr. Chairman, as I noted at the outset, the Association for Foreign Investment in America represents a diverse membership -- foreign-owned companies in the United States, U.S. investors abroad, and state governments -- whose otherwise differing views and perspectives converge on two central points: first, foreign investors make a positive and much-needed contribution to our state and local communities as well as to the national economy, and, second, freedom of investment abroad, which is so important to U.S. economic and business objectives, cannot be maintained if we start closing doors here at home. Our traditional policies on foreign investment have served us well, they are serving us well, and they should not be abandoned at this juncture -- when the gap between U.S. capital requirements and our supply of savings

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45/ National Treatment Instrument, Declaration II.1 of the Declaration on International Investment and Multinational Enterprises (OECD June 21, 1976).

is so large and the necessity for U.S. leadership in international economic policy is so great.

Rather than turning inward, the U.S. should intensify its efforts to get its own budget deficit under control. Reducing the federal budget deficit will reduce demand for investment capital, permitting the financing of private investment expenditures out of available pools of capital -- both domestic and foreign. This could be accomplished without driving up interest rates and, indeed, could result in a lowering of these rates as inflationary expectations receded. In turn, the added investments in plants and equipment would help reinvigorate the economy's industrial base, allowing U.S. exports to compete more effectively. We should simultaneously continue to urge our major industrial trading partners to accelerate their own domestic demand and, to the extent any maintain barriers to the free flow of capital, to reduce them. The combined effect of these two actions will facilitate the needed reductions in the surpluses of our major trading partners. During this period of adjustment, the U.S. should continue to keep its borders open to capital flows. These will be needed to ease the required adjustment.

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Question 1. In a recent law review article you wrote, you say we cannot "slam the doors to foreign business in our own country." Do you believe either of the bills pending before the Committee obstruct a foreign person's ability to do business in this country?

Answer. The article you referred to, *United States Policy Toward Foreign Investment: We Can't Have It Both Ways,*[1] emphasized the fact that international investment is a two-way street. Indeed, in the very paragraph you quote, I said:

The United States cannot negotiate for more liberal investment policies in other countries, as Congress asked the President to do in the Omnibus Trade and Competitiveness Act of 1988, and at the same time adopt new restrictive trade measures at home. It is patently impossible to open doors for American business abroad while we slam shut the doors to foreign business in our own country. Quite simply, the United States cannot reverse its traditional policies toward investment without profoundly affecting the policy perspectives of others.

What I believe, and what AFII stands for, is that it is in America's best interest to maintain its steadfast commitment to the traditional U.S. international investment policy, which is to encourage market-driven international direct investment and to seek to lower barriers to such investment worldwide.

As for S. 289 and S. 856, we believe that they are barriers to a non-U.S. investor's ability to compete on the same terms as U.S. investors. The greater the likelihood that a foreign investor's confidential business information will be made public, the greater the impediment posed by these bills.

Question 2. You have criticized the Harkin/Bryant language as being burdensome. How can these reporting requirements be burdensome when they merely track SEC requirements?

Answer. The analogy to SEC reporting requirements is not quite on the mark.

I think it is fair to say that SEC reporting requirements are not only burdensome but also costly. Some companies, however, both U.S. and non-U.S., choose to list themselves on The New York Stock Exchange and other public exchanges because they believe that the economic benefit outweighs the cost.

But the vast majority of companies, both U.S. and non-U.S., do not subject themselves to the securities laws. To require all non-U.S. investors to meet SEC-like reporting requirements would not only discriminatorily subject them to the burden and the expense, but would place them at a significant economic disadvantage relative to their U.S. competitors.

This would violate the principle of national treatment, to which the United States government is committed in its international economic policy, and which we in AFII firmly believe to be in America's economic best interests.

Of course, if all companies, whether U.S. or non-U.S., were required to meet the same reporting requirements, this would not violate the principle of national treatment.

Question 3. According to a recent study prepared for an investment banking firm, "Japanese investment in the United States is concentrated in wholesale trade." In contrast, 28 percent of European investment was in manufacturing, compared to only 16 percent in wholesale trade. What should we make of the fact that European investment is contributing more than Japanese investment to the U.S. economy in terms of domestic production and value added?

Answer. It is important to note two points at the outset. First, trends suggest a convergence over the next few years towards the 30 to 40 percent share range for the manufacturing sector for all major industrial investing countries. Second, the U.S. government's classification methodology tends to understate the Japanese investment in manufacturing and overstate it in wholesale trade. Both of these points are treated in greater detail below.

The sectoral composition of a foreign country's direct investment in the United States is a reflection of many factors. Principally, it results from the historic pattern of trade and investment relationships that have prevailed between that country and the United States. These relationships, in turn, are influenced by the specific needs and resources of each individual national economy and the particular comparative advantages of the business enterprises in each of these countries as compared with those in the United States. A full explanation of how these sectoral mixes have come about would therefore require a detailed country-by-country and sector-by-sector analysis of all the economic forces at play that have determined these outcomes. Clearly, this would be an undertaking of great scope and magni-

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[1] 4 Am. U.J. Int'l L. & Pol'y 281, 281-82 (1989).

tude. However, absent such a comprehensive effort, I believe it is possible to address the heart of your question, which is a comparative analysis of the relative mix of Japan's direct investments in manufacturing and wholesale trade as compared with European investment. On this point, the following factors ae most relevant:

A. The growth in Japanese direct investment in the U.S. is of recent vintage. As shown in Table 1, from 1980 through 1988, Japan's direct investments in the U.S. grew at nearly double the annual rate for similar European investments—35.4 percent versus 18.8 percent. Japan maintained this relationship from 1985 through 1988 even as the pace of European investments accelerated. The comparable annual rates of growth were 40.3 percent for Japan and 21.2 percent for European investors.

TABLE 1.—FOREIGN DIRECT INVESTMENT IN THE UNITED STATES ANNUAL RATES OF GROWTH 1980–88

[In percent]

	1980–88	1980–85	1985–88
Japan	35.4	32.5	40.3
Europe	18.8	17.3	21.2

Source: Compiled by AFII from Dep't. Commerce data.

B. Initial Japanese direct investments in the U.S. were mainly in response to the need to establish distribution networks for the growing volume of Japanese trade with the United States. Thus, it would logically follow that there would be a relatively heavy concentration of Japanese investments in businesses classified under wholesale trade.

C. With the passage of time, even as short as the 8-year period, 1980-1988, there has been a remarkable convergence among industrial countries regarding the share of their direct investments in manufacturing in the United States. This information is shown in Table 2. It contains data on the relative shares of investments classified as manufacturing and wholesale trade in 1980 and 1988 for Japan, European countries, Canada and all investors in the United States.

TABLE 2.—FOREIGN DIRECT INVESTMENT IN THE U.S. MANUFACTURING AND WHOLESALE TRADE RELATIVE SHARES 1980 AND 1988

[In percent]

	Japan	Europe	Canada	All investors
Manufacturing:				
1980	4.1	12.3	65.7	27.8
1988	22.9	42.4	34.3	36.9
Wholesale trade:				
1980	69.4	5.4	2.8	8.6
1988	34.5	11.5	9.3	15.2

Source: Compiled by AFII from Dep't Commerce data.

For Japan, the share of direct investment classified in manufacturing increased more than five-fold, or from 4.1 percent in 1980 to 22.9 percent in 1988. For European investors the increase was from 12.3 percent to 42.4 percent. For all investors, the growth in manufacturing's share was more modest, or from 27.8 percent in 1980 to 36.9 percent in 1988, while for Canada, the manufacturing sector's share of that country's direct investment in the U.S. actually declined by almost 50 percent, going from a 65.7 percent share in 1980 to a 34.3 percent share in 1988. These trends suggest that a convergence towards the 30 to 40 percent share range for the manufacturing sector for all major industrial investing countries in the United States is likely to occur over the next 5 to 10 years.

Japan has also experienced a rapid decline in the relative share of its direct investments classified as wholesale trade. From 1980 to 1988, this share fell from 69.4 percent to 34.5 percent. This latter figure is still well above those for the other countries shown in the table but it may safely be anticipated that wholesale trade activities will continue to decline in relative importance for Japanese investment in the

United States over time. In contrast, from 1980 to 1988, all of the other investor groups experienced rising shares of direct investments classified in wholesale trade.

D. The reported sectoral mix of foreign direct investment in the United States is also affected by the methodologies used by the Bureau of Economic Analysis (BEA) to classify these investments. The principal method BEA uses to classify all investment and related sales and employment for an affiliate is by the primary activity of the affiliate. By this approach, the U.S. affiliate's primary industry—that is, the industry that accounts for the largest portion of the affiliate's sales—is determined and all data are shown in that industry even if the affiliate has activities in secondary industries. All of the information povided above uses this methodology. Given the fact that a good deal of manufacturing occurs in Japanese-owned affiliates whose primary activity is wholesale trade, this methodology tends to understate the share of Japanese investment in manufacturing and overstate that country's share in wholesale trade.

BEA also collects and publishes some selected data by a second classification method, the "industry of sales" approach. By this classification system, sales and the associated employment in secondary industries are shown in those industries rather than in the affiliate's primary industry. To date, BEA has used the second of these approaches only in the 1980 and 1987 benchmark surveys but not in its annual surveys. It does intend, however, to use both of these classification methodologies in its future annual surveys. The second method, or the "industry of sales" approach is preferable since it provides more disggregated and therefore more precise data on sectoral employment at that affiliate.

Table 3, below, provides some comparative data on manufacturing employment for Japan, Europe, Canada and all investors by these two classification methodologies. When this information is organized by "industry of sales" rather than by the primary activity of the affiliate, employment at Japanese-owned affiliates in the manufacturing sector increases as a share of total employment at all Japanese-owned affiliates. Japan is the only country for which this upward shift occurs.

In 1987, the share of Japanese employment in manufacturing, when classified by the primary activity of the affiliate, came to 28.7 percent, whereas by "industry of sales" methodology, it came to 35.2 percent. For European investors, the comparable figures are 53.4 percent and 46.5 percent respectively. The share of employment in manufacturing for all affiliates dropped from 48.0 percent, when classified by the primary activity of the affiliate, to 42.3 percent when looked at by "industry of sales," while for Canadian investors the decline was from 46.1 percent to 36.3 percent. These data also suggest a convergence for manufacturing employment across national investors, in the 35 to 45 percent range, a conclusion similar to that drawn above based on the data on direct investment in the United States.

As the participation of individual foreign-owned companies across national borders achieves this convergence, each nation's relative contribution to the U.S. manufacturing base will begin to approach parity. Differences among nations will, of course, continue to exist due to the uniqueness of each nation's trade and investment relationships with the U.S.

TABLE 3.—EMPLOYMENT MANUFACTURING SHARE U.S. AFFILIATES BY PRIMARY CLASSIFIED ACTIVITY OF AFFILIATE AND INDUSTRY OF SALES 1980 AND 1987

[In percent]

	Japan	Europe	Canada	All investors
1980 Classification methodology:				
Primary activity of affiliate	31.4	57.5	51.9	54.2
Industry of sales	39.9	51.3	48.8	49.5
1987 Classification methodology:				
Primary activity of affiliate	28.7	53.4	46.1	48.0
Industry of sales	35.2	46.5	36.3	42.3

Source: Compiled by AFII from Dep't Commerce data.

Question 4. According to a study being prepared for the Institute for International Economics, Japanese affiliates import 5 times as much as U.S. companies and 2½ times as much as other foreign affiliates. The Japanese affiliates are importing primarily from their parent companies. What impact does this behavior have on the U.S. economy?

Answer. There is no doubt that U.S. affiliates of Japanese parents are more heavily involved in imports into the United States than is the case for all U.S. affiliates of foreign parents or for U.S. companies in general. The fact that much of the earliest Japanese direct investments in this country was related to wholesale trade activities and that a significant share of Japanese investment continues to be directed to that sector, as described above in the answer to question 3, confirms this conclusion. In 1987, for example, of the $68.4 billion in imports from Japan to all U.S. affiliates of all foreign parents, $64.1 billion, or 93.7 percent, went to affiliates classified in wholesale trade. In contrast, shipments from Europe to all U.S. affiliates of all foreign parents in wholesale trade represented only about 63 percent of these shipments. However, most, if not all, of the imports from both Japan and European nations would have entered the United States even in the absence of any direct investment in the United States, so it would not be accurate to attribute the imports directly to the investments themselves.

U.S. affiliates of Japanese parents tend to import about the same percentage of their imports from their foreign parents as do all U.S. affiliates from their parents. This information is summarized in Table 4 below. It shows that, in 1987, U.S. affiliates of Japanese parents had total imports from all sources of $71.1 billion. Of this amount, $56.9 billion, or 80 percent, came from their foreign parents. For all U.S. affiliates, the comparable percentage figure was 76.5 percent, while for U.S. affiliates with European parents, the figure was 71 percent. Further, for all three country classifications—Japan, Europe and all investors—between 69 percent and 72 percent of such imports from their foreign parents were of goods for resale without further manufacture. These figures indicate that Japanese-owned enterprises in the United States behave very much like all other foreign-owned businesses as distributors of products imported from abroad.

It is quite likely, that as Japanese investors diversify more heavily into manufacturing and as that country's investments already in manufacturing mature, U.S. affiliates of Japanese parents will reduce their imports from Japan. The products produced by U.S.-based operations will undoubtedly begin to replace some of today's imports. Further, those products that continue to be imported by the manufacturing sector are much more likely to involve further processing and value added in this country. All this suggests that, over time, imports from Japan by Japanese-owned companies will decline relative to the domestic value added and aggregate sales of these companies.

TABLE 4.—IMPORTS COUNTRY OF THE FOREIGN PARENT AND INTENDED USE: 1987

[Dollars in millions]

Country	Total imports	Shipped by foreign parent	
		Imports	Resale only
Japan	71,092	56,938	40,488
Europe	50,445	35,871	25,971
All investors	140,617	106,194	73,694

Source: Dep't. Commerce, *Foreign Direct Investment in the United States (1989)*.

Quesiton 5. You are familiar with the Exon Amendment that Senator Exon authored in this Committee and was signed into law as part of the Trade bill last year. The President has asked the Committee on Foreign Investment in the United States (CFIUS) to implement the provision. Do you believe CFIUS has access to enough information to properly implement this legislation?

Answer. My understanding from the Department of the Treasury is that CFIUS believes itself able both to determine and to gain whatever information it needs in any particular case.

CFIUS reviews transactions and, if necessary, investigates them based on voluntary notification made either by the involved parties or by any of its own member agencies. Thé notification requirements are designed to solicit information that will enable CFIUS to formulate whatever further questions it deems necessary. It is my understanding that CFIUS is about to issue draft regulations that include subpoena power, which will give it the power to compel responses to those questions not voluntarily answered.

Moreover, in case of failure to provide material information, or provison of false or misleading information, the law's ultimate sanction of divestment gives companies a most forceful incentive to be truthful and complete in their answers.

As you can see, it would not in any way enahce the effectiveness of the Exon amendment to share the government's confidential data with CFIUS. On the other hand, to require by statute the sharing of BEA's data with CFIUS would raise a separate set of concerns about the integrity of the government's confidential data reporting system.

The CHAIRMAN. Well, it depends upon the tide. It has lifted all of the protectionist boats. There is no question about that. The trend has been in that direction. Once they organized MITI and it worked, now Korea has got the same situation. I have been to Taiwan.

And it has worked. I am not begrudging it in any sense. It is capitalistic; perhaps at its best, down in Indonesia, Singapore. And we are lucky that it has worked. But it has not opened up any markets, as you say, in Japan, or in Korea or in Taiwan. I mean, this is a competition. By the year 2000, the GNP of the Pacific Rim will exceed that of the United States and the EEC combined.

Now, the EEC sees and feels and is preparing and is leveraging itself by 1992.

Now, what is going to happen? And I am trying to meet that competition, rather than these blandishments about it is nice and fair. I am trying to get down to the hard line, where you say the bill does not have an identifiable purpose; it does. What you mean there is not an identifiable problem.

Mr. RICHARDSON. I do not think it serves any purpose whatsoever.

The CHAIRMAN. Well, I want to tell you now that we do not have the problem, but foreign investment is growing. All of the figures show that it has grown by leaps and bounds from $498 billion up to $1.8 trillion. It has jumped by $1.3 billion in this decade of the 1980s, right this minute. And we have seen it grow by leaps and bounds. We see the deluge coming, and we are asking for information.

And you say there is no identifiable problem. There is an identifiable purpose. We do not have the problem yet. That is a given, but we will be having that problem before long, unless we are properly informed.

Mr. RICHARDSON. There is no information required by the Harkin bill that is not already furnished. That is how you know that there is $1.8 billion of foreign investment, of which, incidentally, $1.3 billion is portfolio investment.

The CHAIRMAN. Very good, Mr. Richardson.

Mr. RICHARDSON. And that is because of the U.S. borrowing requirement. Most of the $1.8 billion is U.S. Government paper. If we would improve our savings rate and cut down on the deficit, we would cut down on the flow of foreign money.

As it is now, we need it to finance the government.

The CHAIRMAN. So you oppose the bill because we have got to finance the government. We heard that from the Undersecretary of Commerce. That was his idea, too.

Mr. RICHARDSON. Well, that is true. But I do want to emphasize again, Mr. Chairman, that the Harkin bill would not provide any information that the government does not have now.

The CHAIRMAN. Then why do you object to it?

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Mr. RICHARDSON. Because what it would do is require disclosure of confidential business information on a company-by-company basis.

The CHAIRMAN. So if it were not disclosed, but we got the Harkin bill and just eliminated the disclosure, you would favor the bill?

Mr. RICHARDSON. Then it would be declaratory of existing law.

The CHAIRMAN. And you would favor the bill?

Mr. RICHARDSON. Well, I would want to look at it to see to what extent the existing law might be better than the Harkin bill. I would not object to a new piece of legislation that sought to draft the best possible combination of reporting requirements.

We have given some thought to what such a bill might look like. It would be essentially a codification. It would include the first proposal that Senator Murkowski has made, if not the second. It could very well specifically require plant-by-plant information, which would be made available to BEA indirectly through census by section 1 of the Murkowski bill, as distinguished from the enterprise.

But, I submit, Mr. Chairman, that the question of the adequacy of the information, the completeness of the information, is not an issue. The only issue is: Is there any useful purpose served by spreading confidential business information around on a company-by-company basis? And we have argued, and the Administration has argued, that that would be counterproductive.

The CHAIRMAN. Very good.

Dr. Woodward, we welcome you to the Committee.

STATEMENT OF DOUGLAS WOODWARD, PROFESSOR OF ECONOMICS, UNIVERSITY OF SOUTH CAROLINA

Dr. WOODWARD. Thank you very much, Mr. Chairman.

I am Douglas Woodward, Research Economist and Assistant Professor of Economics at the University of South Carolina. Thank you for this opportunity to testify today. I promise my comments will be brief. I would like my full prepared testimony to be entered into the record.

The CHAIRMAN. Your complete statement will be included in the record.

Dr. WOODWARD. Thank you.

With foreign investment reaching historic peaks in sectors of our nation's economy, it is fast becoming one of the major economic issues America will face in the 1990s, as we have seen here today. In my research over the past several years, I have sought answers to many of the basic questions raised by the influx of direct investment from abroad. Some of this research is included in a book I coauthored with Norman Glickman of Rutgers University, called The New Competitors.

My testimony today addresses the status of government data collection on foreign direct investment. I will comment on the two relevant bills before the Senate, introduced by Senators Harkin and Murkowski.

The foreign investment intelligence gap is real. My written testimony gives some concrete examples of why I think this is so. Not only is better information necessary to advance research in academia, but it clearly would support more informed federal and state

policies. Further, I maintain that more information would help quell unwarranted fears about the nation becoming a colony of some foreign power.

Thanks to the efforts of federal agencies like the Bureau of Economic Analysis, we are not completely in the dark about the "selling of America." Examining the available data, one finds that foreign companies do not appear to be poised to seize large segments of the U.S. capital base. While we need not fear foreign investment, we should carefully watch it. Economic opinion generally favors free capital flows, both direct and portfolio. So, it seems, does our nation's political leadership. Yet it would be foolish only to extol the benefits of foreign investment without recognizing the national security and other concerns that inevitably arise.

From an historical perspective, I find the mood in Washington on this issue really quite tame today. The rebirth of economic nationalism during the late 1980s pales in comparison with the anti-alien ownership campaigns that broke out on Capitol Hill a century ago. Perhaps the most famous remark back then came from U.S. Representative Lewis Payson of Illinois. In a debate over restrictions on foreign land ownership during the late 1880s, mostly directed against the British, Payson asserted, "Not an acre of real estate, not a dollar's worth of real property under the flag that floats over you and me should be under the ownership of a foreigner." I have not heard of anyone in Washington this summer proposing to attach an anti-foreign ownership clause to the flag desecration bill.

The Exon-Florio amendment to the 1988 Omnibus Trade and Competitiveness Act, did authorize the President to review, and even block, foreign takeovers involving national security. But the current bills before the Congress seek no additional authority to restrict investment. I think that point should be made very clear.

I believe that the intent of the legislation—to get a better grip on the facts—is legitimate. Indeed, we would know almost nothing about foreign investment had action not been taken a decade ago. Most of the data we have today came as a result of the International Investment Survey Act of 1976 and the Agricultural Foreign Investment Disclosure Act of 1978. These acts were prompted by concerns about the recycling of OPEC petrodollars and about Japanese purchases in Hawaii in the 1970s. Had Congress taken no action, we would not be able to say anything substantial at this hearing today. All of the data we receive from the government sector results from concerns raised back in the 1970s. I suggest you go back and look at some of those debates on foreign ownership and some of the arguments against why we should not have had legislation that gives us the information we have today. If people had listened to those arguments, what would we know? Without any data, I believe that we would be even more concerned about foreign ownership. When there is ignorance, people overreact.

So, fortunately, in the 1970s, Congress did something. There is still a gap, however. And I think it is time to act again.

That is, despite the legislation enacted in the 1970s, the federal government still does not provide detailed statistics on key aspects of foreign investment. Pertinent, reliable and timely information is scarce. This precludes us from knowing the full extent of ownership, the extent of technology transfer, precisely how many jobs

foreign firms create or eliminate, and other important aspects of the phenomenon.

That is not to say that the available information is bad. However, problems do inevitably arise when one begins to use the data, as I have.

Let me just turn to one example of the problems that I have encountered in my own research. Data on foreign companies' job expansion and cutbacks are published by the Bureau of Economic Analysis, usually in the May issues of the *Survey of Current Business.* Some of the job data was discussed in earlier testimony. You should know that when other witnesses were talking about employment, the latest, detailed data is for 1987. That is what we are looking at right now. So, our information is old or stale. But those problems inevitably arise with economic data. Some of what I say about foreign investment statistics, in fact, is a general problem of the kind of problems we deal with as economists.

But that aside, the figures reported on employment by the Bureau of Economic Analysis in the *Survey of Current Business* are for large foreign-owned affiliates only, and they are thus incomplete. However, combining different data sources, one can estimate that foreign companies are contributing surprisingly few new jobs to the U.S. economy.

I have estimated that foreigners added at most about 25,000 jobs in 1987 on a net basis, leaving aside acquisitions and sales. About 95 percent of all the employment in 1987 attributed to foreigners, came through takeovers. But once you eliminate acquisitions and focus on employment from new plants—the ones governors want so much that they are traveling around the globe right now, probably bumping into each other in Brussels and Tokyo, trying to bring that back to the United States—those jobs do not amount to a whole lot. At the very most, only about 20,000 to 30,000 jobs a year are added through new foreign-owned plants.

Do you know that in South Carolina, we create more jobs than that in a quarter of a year? You have got to put foreign investment in perspective. It is not contributing a whole lot to the U.S. job pool. When I tell this to people, they are often surprised. They say, "Oh, we thought foreign investment creates millions of jobs. We thought it was much more than that." So they ask me as a researcher, "Okay, well aggregate employment does not tell us very much. Why do you not examine what regions of the country, what sectors, what industries are attracting new capital from overseas and how does that compare with domestic investment?"

You know what I have to tell them? There is no way we can answer those questions, because the data simply do not exist. I have talked to the Bureau of Economic Analysis, and because of disclosure provisions, you cannot get any more detailed data on employment or other important measures of foreign activity.

I do not care about obtaining information on individual foreign companies. I do not want confidential information on their operating and income statements. But I would like more data than is currently available to answer the many questions that I am being asked all the time as I speak to state legislatures and to other interested parties around the country.

So, when questions about foreign ownership are raised by the public—currently, there are lots of things that researchers simply cannot answer. On that point, I have to disagree with Mr. Richardson. We do not have adequate information about foreign investment at this point.

To its credit, the Bryant-Harkin bill calls for more detailed data gathering, but does not ask for preclearance or impose restrictions. Further, in its present form, the bill restricts data access to Congressional committees, authorized federal agencies and selected researchers.

I do share some of the concerns raised at the hearing today about disclosure. I think that public disclosure of individual company operations could, in some sense, damage our statistical system, because reporting will not be as good or reliable if companies know that the information could leak out and be used by their competitors, or be used by a regulation agency. I believe we have to think about disclosure very carefully. Certainly, as a researcher, getting company-specific information is not my intent. I would not care if they denied me the name of the foreign company. But, possibly with the Committee on Foreign Investment in the United States, company-specific data would be available to government agencies under Bryant-Harkin.

Even here, I think most of this information asked for in the bill is really not going to damage any company. I think, to some extent, the objections to the disclosure provisions are overblown.

There is, morever, a clear justification for disclosure of multinational operations in the Organization for Economic Cooperation and Development document, the very document that upholds the principle of national treatment. That is the principle that says we treat all firms, foreign and domestic, equally. President Carter signed the document, President Reagan signed it. I do not know if they read it. But if they did, what they would find is that foreigners are encouraged to supply far more information than the United States currently requires. Further, it says there is a justification for disclosure, because multinational business is very complex. Capital crossing national borders, interlocking relationships between companies, makes the extent of foreign ownership a very difficult issue, one that is difficult for governments to track. There is a real need to do just that, and that entails disclosure of certain kinds of multinational operations. I suggest that this committee look at the OECD guidelines on multinational enterprise, and recall that this is the document, again, that upholds our principle of national treatment.

I also believe that the argument on the "chilling effect," that is, if we collected more information that foreigners would restrict or withdraw their investment, is overblown. This "I am going to take my ball home" argument, I think is specious. We have never heard of it happening.

Again, Bryant-Harkin is only asking for information, not preclearance or restrictions. In fact, the Exon-Florio amendment calls for more severe or stricter monitoring than the information gathering proposed this year. Nevertheless, there was no "chilling effect." And we have not seen a "chilling effect" happen in Japan, where U.S. investment is growing. It has never been raised as an issue,

that the Japanese collect information from U.S. companies, therefore, they did not invest. It did not stop Mr. Pickens from investing there. That was not an issue. He supplied the information. Then, he ran into other problems.

Besides providing the government with more a detailed record of ownership characteristics of foreign parents, which I think Bryant-Harkin would do, it could help states assess the economic benefits of overseas investment relative to the cost of attracting it. This state incentive game has really gotten out of hand. The incentives that states offer, companies are more than willing to take, and yet they are not willing to give information that public officials need to be able to assess how much they are going to get from any new investments.

If state agencies leak proprietary information to the general public from individual income and operating statements, they should be met with strict penalties. As I said, I do not care about individual companies, and many of the states who could get information from the federal government might not either.

But I have seen states come up with tremendously inflated impact analyses of what foreign companies are going to do for their economies, based on very faulty information. States definitely need to be better informed, because they are using public money, in some cases, to subsidize foreign companies—as well as domestic companies. This raises, I think, some very serious questions. I think, if not Bryant-Harkin, at the very least, States ought to collect better information and do better economic impact analyses. At present, the states cannot tell the public if incentive money is spent wisely.

Now, let me turn briefly to the bill introduced by Senator Murkowski, which would allow the BEA to draw on the detailed industry records compiled by the U.S. Census Bureau. This is another step well worth considering. The Murkowski legislation attacks, in part, the notable lack of coordination among the 16 government agencies that monitor foreign capital. It would help redress a problem I mention in my full written testimony, the flawed industrial classification of foreign-owned operations.

Briefly, right now, if you wanted to know simply how much Japanese investment is in the U.S. auto industry, how much employment, do you think you could get an answer to that question? No, you cannot. Most of that investment right now is classified by the BEA under wholesale trade, not manufacturing. And you cannot separate out the two.

The Murkowski bill, by drawing on the Census records and getting more interagency coordination, would help resolve that one particular issue. It is an important one from my own research point of view, and therefore I think it is a good piece of legislation.

Thus, the Bryant-Harkin and Murkowski bills, I think we recognize, deal with different aspects of the foreign investment data problem. The former seeks to determine the true ownership of U.S. assets; the latter focuses on individual classification of foreign firms operating here. Bryant-Harkin provides for a limited disclosure, but not in a way that I feel would deter the migration of capital to the United States. The Murkowski bill does not order any additional disclosure, but hardly closes all the data gaps.

One of the gaps that Bryant-Harkin could close, if it was carefully crafted, would be on limited partnerships. A lot of people are concerned about investment coming in this form. I have heard concerns voiced around the country.

These smaller stakes in our economy sometimes involve tremendous leverage over our corporations. We do not know a whole lot about them right now. Bryant-Harkin could supply us with this and other information that we do not currently get from the BEA or other sources.

In closing, let me say that the executive branch now admits that we must improve our economic intelligence, including measures to monitor the flow of foreign capital into this country. In recent testimony before Congress, the Bush Administration's Chief Economist, Michael Boskin, said, "Our data for foreign investments are just not in as good a shape as they could be. Congress should seize this opening and draft fair legislation that would allow us to understand foreign investment."

Thank you.

[The statement and questions and answers follow:]

Prepared Statement of Dr. Douglas P. Woodward, Research Economist and Assistant Professor of Economics, University of South Carolina

Mr. Chairman and Members of the Committee:

I am Douglas Woodward, Research Economist and Assistant Professor of Economics at the University of South Carolina. Thank you for this opportunity to testify today.

With foreign investment reaching historic peaks in sectors of our nation's economy, it is fast becoming one of the major economic issues America will face in the 1990s. Each witness today offers a different perspective on the rise of foreign ownership. Some speak from their experience in international business, others from their background in government. I speak as an academic economist concerned about both the challenges and opportunities posed by this complex issue.

In my research over the past several years, I have sought answers to many of the basic questions raised by the influx of direct investment from abroad. Does foreign investment create significant job opportunities for U.S. citizens? How does it influence economic development in our states, cities, and rural areas? My findings regarding these and other questions can be found in a book I wrote with Norman Glickman of Rutgers University: *The New Competitors: How Foreign Investors Are Changing the U.S. Economy*, published by Basic Books in April 1989.

My remarks today will primarily address the status of government data collection on foreign direct investment. I have given this topic considerable thought over the past several years. Accordingly, I will comment on the two relevant bills before the Senate--introduced by Senators Harkin (D-Iowa) and

Murkowski (R-Alaska).

At the outset, let me say that the foreign investment intelligence gap is real. Later in my testimony, I will give some concrete examples of why I think this is so. I will argue that our nation's economic security dictates that we do a better job of monitoring the phenomenon. Not only is better information necessary to advance research, but it clearly would support more informed federal and state policies. Finally, I maintain that more information would help quell unwarranted fears about the nation becoming a colony of some foreign power.

Foreign Investment in Perspective

With the rising tide of foreign investment, the United States economy has begun to feel the consequences of becoming the world's largest debtor nation. The media report daily on some aspect of this inward investment surge. Non-American multinationals like Grand Metropolitan, Toyota, Siemens, and Philips have more than tripled their ownership of American assets so far this decade. Carnation, Firestone, TV Guide, and Pillsbury are some of the familiar "American" names now owned by foreign interests.

Surveys of U.S. public opinion show a growing uneasiness about these trends. A 1988 poll by Smick-Medley found that almost three-quarters of general American public believe rising foreign investment leaves the nation with less control over its economic destiny. Almost four-fifths favor of a law limiting foreign investment in business and real estate. The Citizens Against Foreign Control of America (CAFCA), a private organization with an estimated 30,000 members, calls for an outright ban.

Prepared Statement — Douglas P. Woodward

Regrettably, the damage to real economic growth from placing restrictions on foreign capital is not always taken seriously by an increasingly apprehensive public. In general, America needs to understand more about how fundamental changes in our global economic position will affect our future prosperity.

Thanks to the efforts of federal agencies like the Bureau of Economic Analysis, we are not completely in the dark about the "selling of America." Here are a few of the basic facts we should bear in mind when discussing foreign ownership of our factories, service businesses, and real property.

* Of the record $330 billion interest foreigners held in the nation's economy by the end of 1988, the British accounted for the greatest share, as they always have, followed by the Japanese and the Dutch. This ranking is based on the direct investment *position*, the most widely cited measure. The $330 billion includes only external funds flowing to the United States from overseas.

* When we look at the *assets* of foreign-owned firms in America, we find the stake reached over $830 billion by 1986 (the latest available data). Here the British are again first; the Canadians are second, with the Japanese third and moving up rapidly.

* From 1977 to 1986, the foreign-owned share of U.S. assets rose from five to almost nine percent. This is still small compared with West Germany, the world's strongest exporter, where foreigners own about 17 percent of total assets. But it is large relative to the world's most rapidly ascending economic power, Japan, where foreigners control only 1 percent of total assets.

* Most of the investment goes to finance corporate takeovers. In 1988, 92 percent of the new foreign-owned assets came through acquisitions of U.S. business enterprises, leaving only 8 percent through newly established firms. Acquisitions always dominate new establishments. With a large number of billion dollar-plus takeovers in 1988, acquisitional activity was especially pronounced.

There are many reasons why America attracts foreign investors, but two stand out: the vast American market and political stability. In addition, protectionism, or even the threat of it, convinced some companies to move from an export to a direct investment strategy.

What about the so-called fire sale of U.S. assets? The available data indicate that the recent spate of foreign takeovers is only partly driven by the dollar's depreciation from 1985 through early 1989. America's weakening currency did create bargains for otherwise interested foreign acquirers. However, some of the funds for expansion came from reinvested earnings. Foreigners also found financial backing for corporate takeovers, both friendly and unfriendly, in U.S. capital markets.

In any event, foreign companies do not appear poised to seize large segments of the U.S. capital base. The greatest penetration is in urban commercial real estate, in a few manufacturing industries like chemicals and cement, and in service businesses like the publishing and advertising.

We need not fear these trends, but we should carefully watch them. It would be foolish only to extol the benefits of foreign investment without recognizing national security and other concerns. If for no other reason, we should pay close attention because we are increasingly dependent on foreign capital to finance economic growth. At the beginning of this decade, the funds for our nation's investment came exclusively from domestic sources. Now we fund about half of it from abroad.

It is in this context that those opposed to foreign investment should recognize the dire consequences of any sudden withdrawal of foreign funds. Most economists agree that a significant reversal now would bring about the dreaded hard landing, as interest rates would rise and provoke a recession. We have no choice but to accept the investment. In any case, economic opinion generally favors free capital flows--both direct and portfolio. So, it seems, does our nation's political leadership.

In fact, from a historical perspective I find the mood in Washington is quite tame. The rebirth of economic nationalism during the late 1980s pales in comparison with the anti-alien ownership campaigns that broke out on Capitol Hill a century ago. Perhaps the most famous remark back then came from U.S. Rep. Lewis E. Payson of Illinois. In a debate over restrictions on foreign land ownership during the late 1880s, mostly directed against the British, Payson asserted, "Not an acre of real estate, not a dollar's worth of real property under the flag that floats over you and me should be under the ownership of a foreigner."

I have not heard of anyone in Washington this summer proposing to attach an anti-foreign ownership clause to the flag desecration bill. The Exon-Florio amendment to the 1988 Omnibus Trade and Competitiveness Act *did* authorize the President to review and even block cases involving national security. But the current bills before the Congress seek no additional authority to restrict investment. I believe that the intent of the legislation, to get a better grip on the facts, is legitimate.

Indeed, we would know almost nothing about foreign investment had action not been taken over a decade ago. Most of the data we have today come as a result of the International Investment Survey Act of 1976 and the Agricultural Foreign Investment Disclosure Act of 1978. These acts were prompted by concerns about the recycling of OPEC petrodollars and about Japanese purchases in Hawaii. As investment now funnels in from many more sources, giving rise to new concerns about technology and competitiveness, the time has come to take a harder look at the state of our knowledge.

Prepared Statement — Douglas P. Woodward

On the Data Gap

Despite the legislation enacted in the 1970s, the federal government still does not provide detailed statistics on key aspects of foreign investment. Pertinent, reliable, and timely information is still scarce. This precludes us from knowing the full extent of ownership, the extent of technology transfer, precisely how many jobs foreign firms create or eliminate, and other important aspects of the phenomenon.

That is not to say that the available information is bad. In particular, the figures on U.S. affiliates of foreign companies compiled from the Bureau of Economic Analysis' (BEA) benchmark studies and annual surveys are generally reliable. After all, reporting is required by law.

However, problems do inevitably arise when one begins to use the BEA data. One well-known limitation is posed by disclosure rules. This problem is not unique to foreign investment statistics--disclosure rules affect other government data collected from private business. Commerce Department officials and others often point out that preventing *public* disclosure is necessary, if we are to get accurate reports from private companies in the first place. Unfortunately, this means scholars find many missing observations, or cells, in published government records.

As a result, researchers can only roughly gauge how foreign investment is changing our nation. Let me give you one example of the problem. Data on foreign companies' job expansion and cutbacks are published by the Bureau of

Economic Analysis, usually in the May issues of the *Survey of Current Business*. These figures are reported for large affiliates only, and thus are incomplete. However, combining different data sources, one can estimate that foreign companies are contributing surprisingly few new jobs to the U.S. economy. I figure that foreigners added about 25,000 to 30,000 net jobs last year, leaving aside acquisitions and sales (about 95 percent of all employment attributed to foreigners came through takeovers of U.S. companies).

Although net employment is growing, we can see that foreign investment is not yet a major engine of job growth. Affiliates of foreign companies add fewer jobs to the whole U.S. economy in a year than domestic firms add in a small state like South Carolina in less than half the time.

The next logical question is: Which industries and areas of the country benefit from this new, but limited source of job creation? Here is where my research came to an abrupt halt. Currently, no one can get a breakdown of employment creation for specific sectors and regions of the economy. Existing statutes prohibit the release of more detailed information and compel the Bureau of Economic Analysis to deny any requests for more precise data.

Researchers are likely to encounter many other data holes as they seek answers to the mysteries of international capital. One finds that foreign companies only have to supply information to the BEA on a "consolidated basis." This means that all of a foreign automobile company's operations (or establishments) can all be categorized under one industry group. It becomes a problem because many foreign concerns have U.S. establishments spanning several industries. They may both assemble automobiles and distribute them through a network of wholesale affiliates. A foreign-owned auto assembly plant may be

classified under wholesale trade, not manufacturing, if that was how the enterprise chooses to report its operations to the BEA.

Besides the BEA's surveys, other data sources are more detailed, yet they are not as reliable. I have used International Trade Administration (ITA) data to get a better handle on the regional and industrial distribution of direct investment. While the ITA tracks most new plant announcements, the information is notoriously poor. The ITA does not check to see if the investments actually occurred.

One could search all public and private sources and still find it very difficult to do a comprehensive analysis of the technological linkages between foreign firms and the rest of the economy. Therefore, it is difficult to calculate the total effects, directly and indirectly, on employment, earnings, or output. This is not a just an academic matter; it can affect public policy as well. For example, economists cannot undertake precise economic impact analyses of incentive packages, the bait increasingly offered by state and local governments to lure foreign firms. Nevertheless, Illinois passed a law in 1987 requiring an impact study before offering any incentive package to a foreign company.

When economists conduct such analyses, they are forced to use inadequate information or undertake costly surveys. To estimate the total effects of a new plant on a region, the analyst must know the extent to which foreign firms buy their inputs locally. In some cases, highly inflated job estimates, based on faulty data, have encouraged the use of public money to attract offshore investment.

While states are becoming more actively involved in monitoring foreign

investment, their missions vary. The California Senate Banking and Finance Committee forwarded a bill this past spring that would upgrade data collection. It unanimously passed a measure that calls for mandatory registration from foreign investors. More states may follow California's lead. Already, many keep tallies of foreign companies operating within their borders. However, only the federal government can provide consistent, uniform, and comprehensive information.

Assessment of Proposed Legislation

The Foreign Ownership Disclosure Act of 1989, proposed by Senator Harkin and Rep. Bryant, has brought the data gap to the attention of the federal government. To its credit, the Bryant-Harkin bill requires registration, but does not ask for preclearance or impose restrictions. Further, in its present form the bill restricts data access to Congressional committees, authorized federal agencies, and selected researchers. The information can and should be carefully compiled to avoid giving confidential operating and financial information about individual companies to the public.

Thus, Bryant-Harkin does not endanger America's long-standing, liberal posture toward foreign investment. Nevertheless, the bill is often denounced by those who claim that we already collect enough information. They argue that any new data gathering would place an unfair burden on foreign firms and drive them to withdraw or curtail their U.S. operations. This "I'm going to take my ball home" line is specious. Foreigners will not stop investing because the federal government will know who they are and where they are from. We have not

heard of U.S. companies refusing to invest in Japan because of prior notification requirements. Foreign companies invest in America to tap its large and lucrative market and will continue to do so. Having to "sign in as they enter our open door," as Congressman Bryant says, isn't going to stop them, nor should it.

True, some of our other major trading partners like Great Britain and West Germany do not ask for prior notification. Yet there is clear evidence that most other countries closely monitor international capital flows. Unqualified statements about greater liberalization of international capital flows can be misleading. Every nation has a unique set of laws governing foreign investment. Notwithstanding Prime Minister Margaret Thatcher's avowed commitment to free trade and capital flows, she ordered Kuwait to trim its investment stake in British Petroleum by one half.

Another charge often leveled against the Bryant-Harkin bill is that any disclosure of foreign-owned operations not required of domestic firms is discriminatory. Does Bryant-Harkin violate our commitment to provide equality of treatment for all firms operating in the United States?

There is a clear justification for disclosure of multinational business operations--in the very document that upholds the "principle of national treatment." Signed by the United States and other members of the Organization of Economic Cooperation and Development (OECD), the *Declaration on International Investment and Multinational Enterprises* states that multinational companies are complex organizations, with often circuitous links between offshore affiliates and the corporate parent. We find that "advances made by multinational enterprises in organising their operations beyond the national framework may

lead to abuse of concentrations of economic power and to conflicts with national policy objectives. In addition, the complexity of these multinational enterprises and the difficulty of clearly perceiving their diverse structures, operations, and policies sometimes give rise to concern."[1] Foreign companies are called on to register with the host nation and supply much more information than the United States presently requires.[2]

Bryant-Harkin addresses the major issue raised by the OECD: uncovering the ultimate beneficial owner, that is, the foreign enterprise or individual that has effective control over a foreign asset. The ultimate beneficial owner is often difficult to trace. Part of the problem is that some global enterprises change hands frequently; others list tax havens as their headquarters. Further, multinationals often tie together scores of subsidiaries domiciled in different nations, all belonging to the same corporate entity. Imagine following a genealogical chart in a world where bigamy is widely practiced, and you get some idea of the complexity involved in following the chain of ownership.

Besides providing the government with a more detailed record of ownership,

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[1] Organization for Economic Cooperation and Development, *The OECD Guidelines for Multinational Enterprises* (Paris: OECD, 1986), p. 11.

[2] Specifically, the OECD guidelines state that multinational enterprises should publish, at least once a year, financial information and other relevant data on its operations, including: (1) the name and location of the parent company, its major affiliates, and percentage ownership in these affiliates; (2) sales by geographic area; (3) significant new capital investment by geographic area; (4) the average number of employees in each area; (5) research and development spending for the company; (6) policies on intra-group pricing; (7) a statement of sources and uses of funds for the enterprise; and (8) the accounting procedures used in compiling the information. See Organization for Economic Cooperation and Development, *The OECD Guidelines for Multinational Enterprises* (Paris: OECD, 1986), especially pp. 13-14.

Bryant-Harkin could help states assess the economic benefits of overseas investment relative to the costs of attracting it. Any leakage of proprietary information to the general public from individual income and operating statements should be met with strict penalties.

As an alternative to the bill, Congress could direct the Bureau of Economic Analysis to modify its survey of foreign direct investment. However, this would still leave gaps since companies report to the BEA only if they control ten percent or more of an asset. Smaller ownership stakes such as those found in limited partnerships, especially in real estate, would go unreported.

The bill introduced by Senator Murkowski, on the other hand, would allow the BEA to draw on detailed industry records compiled by the U.S. Census Bureau. This is another step well worth considering. The Murkowski legislation attacks, in part, the notable lack of coordination among the 16 government agencies that monitor foreign capital. It would also help redress a problem I mentioned earlier--the flawed industrial classification of foreign-owned operations. Information from the Census would provide a better picture of the actual industrial distribution because the bureau's data are collected at the establishment level, not the enterprise level. It would allow for closer inspection of foreign penetration in vital sectors of the American economy.

It is easy to see that the Bryant-Harkin and Murkowski bills deal with different aspects of foreign investment--the former seeks to determine the true ownership of U.S. assets, the latter focuses on the industrial classification of foreign firms operating here. Bryant-Harkin provides for limited disclosure, but not in a way that would deter the migration of capital to the United States. The Murkowski bill does not order any additional disclosure, but hardly closes

all the data gaps.

In either case, we not have all the data we need to evaluate foreign investment. We will still not know about the extent of domestic sourcing by foreign-owned operations or about the skill levels of their workers. I argue that at the very least we must have information on where foreigners buy their inputs and on the amount and type of labor they hire.

Close the Data Gap, But Keep the Door Open

My testimony shows why I must disagree with those who claim that we do not need any new legislation on federal data collection. Ultimately, I believe the best approach is to give one agency the responsibility to do the following:

* Assemble information from the many agencies that collect data on foreign investment and serve as a contact point for states collecting similar information.

* Analyze and disseminate information to other federal agencies and to states, helping them devise foreign investment-related development policies.

* Conduct economic impact analyses for all significant foreign investments, both to and from the U.S. The federal agency should publish regular reports on employment changes.

* Provide information to the interagency Committee on Foreign Direct Investment in the United States to help screen a limited number of investments that involve national security.

* Report to Congress and the Executive Branch on an annual basis to help shape macroeconomic and international trade policy.

By taking these steps, we could make more intelligent and effective policy at all levels. The information gathering I suggest would not be intrusive to foreign companies. Although it would require committing more funds to the

agency or agencies involved, I believe the cost would be modest, especially in light of the potential benefits.

Perhaps the government is not ready to revamp the whole data collection system. To go to the other extreme, however, to do nothing and accept the *status quo*, would certainly be mistaken.

The executive branch now admits that we must improve our economic intelligence, including measures to monitor the flow of foreign capital into this country. In recent testimony before Congress, the Bush administration's chief economist, Michael Boskin, said, "Our data for foreign investments are just not in as good a shape as they could be." Congress should seize this opening and draft fair legislation that will allow us to understand foreign investment.

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

1. *In your testimony you give two primary reasons why America attracts foreign investment--the vast American market and political stability. Is it safe to say that enactment of S.289 would have little impact on the levels of FDI?*

Yes, it is safe to say that Foreign Ownership Disclosure Act of 1989 would be a minor influence on levels of FDI. Most research on foreign direct investment in the U.S. stresses the size, growth, and diversity of the U.S. market--and the need for foreign firms to establish a local presence--as the major attraction.[1] Market pull encompasses motives to maintain and expand market share already gained through exports. It also includes the need to surmount protectionist barriers that would effectively restrain the all-important U.S. market to foreign goods. Secondary attractions include political stability, labor climate, technology assimilation, and exchange rates.

It is hard to believe that registration in itself would override these fundamental factors. When the U.S. started collecting more information on affiliates of foreign companies under the Foreign Investment Study Act in the 1970s, the capital flows kept increasing. But the possible impact of new public registration on foreign direct investment has never been examined systematically. First, it would be necessary to show that this form of registration is a hindrance. Then, one must prove that registration burden is significant enough to offset the other attractions to investing in America.

There is little evidence that any form of host government policy, apart from protectionist trade legislation, influences direct investment in developing counties. For example, no one has ever shown that Canada dampened direct investment by creating the Foreign Investment Review Agency in 1974 to screen

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[1] This is the consensus of both surveys and statistical studies. See, for example, Riad A. Ajami and David A. Ricks, "Motives of Non-American Firms Investing in the United States," *Journal of International Business Studies*, Winter 1981, pp. 25-34.

investments of "significant benefit."[2] Some have argued that a fear of nationalization and possible restrictions on the repatriation of earnings chilled direct investment in Western Europe during the 1970s. At any rate, it is impossible to conceive of either of these kinds of restrictive policies in the United States. Clearly, it is not part of the present legislation.

Thus, as for the chilling effect of the S.289 on the level of FDI, I have to say that the whole question at first appears overblown. If nothing else changed, America would remain open for the free international investment under the Bryant-Harkin bill. It is hard to believe that long-term business decisions would suddenly shift because of expanded reporting requirements by the host government. (Portfolio capital is more prone to sudden changes.) During the next few years, I can think of only two principal factors that would suppress direct investment: a stronger dollar and a deep recession (as occurred in the early 1980s).

Only if Bryant-Harkin bill is seen as a retreat from America's open-door policy would it act as a possible deterrent on investment flows. All arguments about the chilling effects are speculative, but the most compelling argument against S.289 says that it would be a first step toward requiring preclearance and regulation of direct investment flows. Those opposed to the bill--calling it discriminatory, burdensome, protectionist, and anti-foreign--have succeeded to some extent in getting their message out. It is important, then, to view S.289 in the present political climate. Within the context of rising economic nationalism, the bill could be perceived as a possible symbolic move toward restriction.

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[2] Through the Investment Canada Act, the nation now monitors far fewer investments than it did under the screening process started in 1974.

Still, I take the legislation at face value. If there is a hidden agenda to restrict investment, I am not aware of it. I believe that if we know more about foreign ownership, then we will see that there is little to fear from it. If we knew more about the foreign investment, restrictive legislation would be appear even more unwise than it does today.

2. *Should our government collect information as to the record of foreign affiliates in the areas of environmental compliance, workplace conditions, sex and wage discrimination, foreign corrupt practices, etc.?*

As I stated in my testimony before the Senate Commerce Committee on July 11, 1989, I always support efforts to upgrade our information base. However, if the government is going to collect information on these important issues, it should recognize that these are not problems peculiar to U.S. affiliates of foreign companies. Norman Glickman and I argue in *The New Competitors* that the foreign labor and environmental record is far from perfect, but it is no worse than domestic companies. Foreign companies tend to mirror the best and worst practices of their domestic counterparts. Thus, we should only collect comparable information from both foreign and domestic companies.

3. *Senator Harkin's bill allows "persons performing qualified research, under procedures established by the Secretary of Commerce" to have access to confidential information. What kind of regulations or guidelines would you suggest here to ensure the information would be kept in the appropriate hands?*

The guidelines for "persons performing qualified research" must begin with a strict definition of who is considered to be doing "qualified research." This group is vaguely defined in S.289. Of all the groups mentioned in Senator Harkin's bill, this is only this category that lies outside the government sector (except for consultants working under government contract). Those "persons doing

qualified research" outside of the government should be those who do not have any need for individual foreign corporate records--only those engaged in assessing the *general* impact of foreign investment in the U.S.

It should be stipulated that the information is used for analysis only; not for government regulation, taxation, or to assist private business strategy. Any information on foreign companies not available on domestic company operations should not be divulged. Further, any information supplied to private academic institutions or persons performing research should have the names of the companies involved deleted. Requests from those doing "qualified research" should include a written statement of the research design. It should be guaranteed that all data would not be reported in a way that would lead to any disclosure of individual operations. All researchers should sign a special form that includes strict penalties for any violation of disclosure rules. For example, I have used confidential state-level foreign and domestic economic data, with a strict understanding with state agencies that I would only report tabulations that would not violate disclosure of individual company operations.

4. *The majority of foreign investments are passive, portfolio investments - $1.4 trillion out of $1.7 trillion last year. Do we need additional information on these investments or is it just direct investment that we should focus on?*

Yes we do need more information on portfolio investment. Not all investments are passive just because they fall below the ten percent ownership rule that defines direct investment. Smaller equity holdings may not imply ownership or control of an enterprise, but they can be used to influence management. Smaller equity shares have been known to influence managerial behavior. In one example involving AM International, a foreign company proposed

a joint venture. AM International rejected the initial offer, yet agreed after the foreign concern bought a five percent stake in the company.

I would limit any new information gathering on portfolio investment to cases where a foreign concern holds five percent of a domestic enterprise's voting securities, or the equivalent, as required by the Securities and Exchange Commission for publicly traded companies. This would pick up any significant portfolio investments and reduce the amount of paperwork. The questions could be the simple "postcard" format suggested by Congressman Bryant.

5. *As you know, U.S. investments abroad are thought to be worth $200 - $700 billion more than their book value. If they were valued at current rates, the U.S. might very well not be a net debtor -- do you think this should be taken into consideration when discussing this issue?*

True, it is often reported without qualification that the U.S. international debt to the rest of the world turned negative in 1985 for the first time since the First World War and rapidly deteriorated to $532.5 billion by 1988. Problems do arise with using historic book value in comparing the position of international investments here and abroad. These problems should always be taken into consideration when using the international investment position data. The Bureau of Economic Analysis makes it clear that a current and consistent valuation of the U.S. assets abroad and foreign assets here is not given by the figures. Therefore our understanding of growing international indebtedness is incomplete and inaccurate.[3] We understate the relative size of inward direct investment in relation to outward investment, which as the previous question implies, accounts for about one-fifth of total international capital position.

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[3] U.S. Department of Commerce, Bureau of Economic Analysis, "Measuring the U.S. International Investment Position," *Survey of Current Business*, June, 1989, p. 40.

Outward investment is understated by using historic book value because it is mature, much of it occurring in the 1960s and 1970s, not over the past decade as is the case with inward investment. No doubt, if we could accurately estimate the market value of U.S. assets overseas, then we would find direct investment abroad is much greater than direct investment in the United States.[4]

If international investment was valued at current prices (which the Bureau of Economic Analysis says it cannot be), then one might surmise that the U.S. is *not* a net international debtor. But that conclusion would wrong. It would neglect another important factor left out of the net investment position--the "statistical discrepancy." This large unaccounted for gap in the data primarily affects portfolio, not direct investment. The Commerce Department reported the discrepancy runs as high as $250 billion and understates reported foreign-held assets in this country. The size of these "errors and omissions" and other data gaps, however, is apparently impossible to quantify with any precision.

Therefore, we can only roughly gauge the size of America's negative international investment position. But the evidence clearly shows that the U.S. is slipping rapidly. The Bureau of Economic Analysis is clear on this point: "Thus, in broadest terms, it is likely that the IIP [the International Investment Position] is understated because some assets are carried at book or face values and overstated because some capital inflows are unrecorded. It is likely that if the component assets were all stated in current values and better measured, the IIP would still show a substantial decline over the last 7 years, reflecting

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[4] W. MacReynolds, "Facts and Fallacies About Foreign Investment," *U.S. Chamber of Commerce Policy Working Papers*, June, 1988.

the large cumulative U.S. current account deficit."[5]

At the same time, the data do not suggest that because the United States is a net international debtor, that it becoming Brazil North (the United States is unique is that its debt is denominated in its own currency). But the problems for the U.S. economy will become more visible in the decade. At the beginning of this decade, earnings from overseas investments used to offset the trade imbalance and keep the U.S. current account in the black. Interest and dividends earned by foreigners on investments in the U.S. have surpassed earnings from abroad and contribute to the annual current account deficit.

6. *You note that acquisitions are by far the most favored investment. Isn't this true for American companies as well in the 1980's? We've been experiencing merger mania. When you did your job losses and gains figures on acquisitions, did you have any method to take into account jobs saved at ailing firms by foreign acquisitions, for example, the Bridgestone-Firestone acquisition?*

Here is a good example of where better and more comprehensive data provided by the federal government could help us understand the impact of foreign investment on the U.S. economy. Many observers misrepresent the foreign firm employment data by failing to account for how the job counts rises and falls through acquisitions, divestitures, new plants, expansions, and cutbacks. A "Dear Colleague" letter from four members of the House Energy and Commerce Committee argued against the Bryant-Harkin legislation by claiming that "our economy will lose the benefits associated with foreign investment. This includes three million American jobs that are *created* by the U.S. affiliates of foreign

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[5] U.S. Department of Commerce, Bureau of Economic Analysis, "Measuring the U.S. International Investment Position," *Survey of Current Business*, June 1989, p. 40.

companies."[6] While foreign companies now employ over three million workers, it is not true that these jobs were "created" by foreign companies since 95 percent come through mergers and acquisitions. One can only guess that jobs through acquisitions were "saved" by the influx of foreign capital.

Right now, we can only assess the merits of foreign acquisitions on the performance of U.S. companies on a case-by-case basis. For example, Elliot L. Richardson, chairman of the Association for Foreign Investment in America, has used the Bridgestone-Firestone example to argue that jobs can be saved thorough acquisitions. One can point to other examples of where ailing American firms were revitalized by infusions of foreign capital, as Norman Glickman and I do in *The New Competitors*. But what happens when Renault divested its ownership of AMC to Chrysler? Were jobs saved by the domestic concern?

There are methods that could help us better determine the impact of foreign takeovers on the U.S. economy. One could compare the whether net U.S. affiliate employment increased in lagging industries and in otherwise distressed areas of the economy. But this procedure for assessing the impact of foreign acquisitions and divestitures on U.S. employment would require detailed foreign investment tabulations by industry and region. Unfortunately, foreign and domestic data by industry and region are not comparable. This precludes a definitive analysis for two principal reasons: (1) there is a high degree of aggregation in the acquisition figures provided by the Bureau of Economic Analysis and (2) reporting for U.S. affiliates is on an enterprise, not establishment basis.

7. *You note that one of the major problems with the BEA data is the lack of*

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[6] Letter from Representatives Norman F. Lent, Mike Synar, Michael G. Oxley, and Bill Richardson to members of the U.S. House of Representatives, Energy and Commerce Committee, Washington, D.C., May 9, 1989. Emphasis mine.

establishment level data. Could this be solved by a BEA/Census linkage as suggested by Senator Murkowski? Could establishment level data be released then in aggregate form without compromising confidentiality?

The bill proposed by Senator Murkowski on April 19, 1989 is a reasonable and worthwhile effort to resolve some of the problems I have pointed to in my written testimony to the Commerce Committee. The BEA could provide researchers with direct comparisons of foreign-owned and domestic establishment activity, including employment and payroll, data which are not now available. By allowing the Bureau of Economic Analysis to have access to U.S. Census data on manufacturing and other sectors of the economy, the government would not have to collect any new data.

We should recognize that the origin of the establishment versus enterprise problem in the BEA data dates back to the Paperwork Reduction Act. The Bureau of Economic Analysis' original 1974 benchmark study of foreign direct investment actually required reporting on an establishment basis (for property plant and equipment and other measures of foreign firm activity). The BEA's 1974 benchmark survey had a separate report for each U.S. enterprise in which a foreign company had an investment.[7] For manufacturing and other sectors, the data were comparable to the domestic series published in the *Census of Manufacturers*. By the 1980 benchmark study, following the passage of the Paperwork Reduction Act, reporting was changed to a fully consolidated basis.

In addition, the U.S. Bureau of the Census used to published a valuable series on establishment-level foreign activity taken from its Company Organization Survey files. Annual issues of its *Selected Characteristics of*

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[7] U.S. Department of Commerce, Bureau of Economic Analysis, *Foreign Direct Investment in the United States*, 1980 (Washington, D.C.: USGPO, 1983), p. 4.

Foreign-Owned U.S. Firms were available from 1975-1982. Academic and government researchers relied on this information to analyze the relative performance of foreign and domestic firms.[8] But the series was discontinued because of budget cutbacks. Since it appears unlikely that the Bureau of Economic Analysis benchmark will change to an establishment-level reporting basis, then the BEA/Census linkage provides the best alternative.

Section 1 of the Murkowski bill (S. 856) would give the BEA access to Census files but not violate the confidentiality of individual firms. In providing this information to the public, the present disclosure rules, which apply to all firms, would remain in force.[9] The lack of disclosure would be no more of a problem than any analyst expects to find when using Census or BEA data. Even if published in aggregate form, the new information would provide a much more accurate picture of the actual industrial breakdown of foreign firm employment, payroll, and other measures of economic activity than is currently available.

8. *You state that the bills proposed by Senator Harkin and Congressman Bryant pose little threat of stopping foreign investment, particularly investment in large publicly traded U.S. firms. However, is it a violation of our "national treatment" obligations under the OECD Code and our Treaties of Friendship, Commerce and Navigation to disclose business information about privately-held foreign companies when we don't do this for privately-held U.S. companies?*

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[8] For an example of how these data were used to compare payroll in foreign and domestic companies, see Edwin Coleman, "Regional Aspects of Foreign Direct Investment," U.S. Department of Commerce Working Paper on Structural Change in the U.S. Economy (Washington, D.C.: U.S. Department of Commerce, Bureau of Economic Analysis, 1986). The data were also used to compare domestic and foreign firm economic activity among states. See, B. O'hUallachain, "Spatial Patterns of Foreign Direct Investment in the United States," *Professional Geographer*, vol. 37, no. 2, pp. 155-63.

[9] Section 2 (b) of the bill would give the Committee on Foreign Investment in the United States access to confidential Census and BEA files.

The principle of national treatment clearly states that all laws, regulations, and administrative practices pertaining to foreign-controlled enterprise should be no less favorable than that for domestic enterprises. That does not mean that the U.S. cannot collect additional information from foreign companies. Indeed, we already require foreign firms to report under the International Investment and Trade in Services Act. No one has argued that this places a special burden on foreign companies operating in the United States. I believe we need to collect information on enterprises based overseas, those that are privately held and publicly traded (including state-owned enterprises). The OECD national treatment principle and our Treaties of Friendship should not be used to curb government efforts to understand the multinational structure of businesses operating in the United States.

Still, I would not argue for *public* disclosure any information that would discriminate against privately held foreign companies. In *The New Competitors*, Norman Glickman and I write that tt is not necessary to compel full public disclosure of detailed financial information about *individual* companies. Efforts to report the names of foreign investors ignore that the government's statistical system is built on anonymity. Divulging investors' names would make it more difficult to collect data from all foreign investors. Specific information about individual companies, public or private, should be withheld from the public.

Critics argue that the data would leak to the public anyway. But this has not happened in other countries, except where the government openly makes information about individual companies available to the public. France has a comprehensive registry of direct investment transactions, but it remains within the government. It has not leaked to the public at large. My experience in

dealing with the Bureau of Economic Analysis leads me to conclude that this leakage would not happen here. The agency is meticulous in holding to the disclosure requirements.

9. *Dr. Woodward, have you done any research on foreign investment on other countries? Are you aware that many of our G-7 partners believe the U.S. data is the most complete and reliable?*

My research has focused on the impact of foreign direct investment, both inward and outward, on the U.S. economy. I am aware that the U.S. data are often better than what one can obtain from other Group of Seven countries. However, it is probably more accurate to say that the U.S. data are not as unreliable or incomplete as the data collected by other G-7 governments.

In *The New Competitors*, we quote Robert Ortner, the former undersecretary for economic affairs: "BEA's data provide a wealth of information on foreign direct investment...In terms of quantity, quality, variety, and timeliness of the aggregate statistics it produces, the BEA data system is unmatched by any other country in the world."[10] I have also read the December 7, 1988 Department of Treasury report: "Survey of G-7 Laws and Regulations on Foreign Direct Investment." This report shows that every G-7 nation collects data on inward direct investment for statistical and balance of payments purposes and makes comprehensive, aggregate information available to the public. If the U.S. system is the best, we should applaud the efforts of the BEA, especially given their budget constraints. But as my previous answers indicate, I believe we can do even better.

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[10] Quoted in Norman J. Glickman and Douglas P. Woodward, *The New Competitors: How Foreign Investors Are Changing the U.S. Economy* (New York: Basic Books, 1989), p. 303.

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10. *You reference the OECD Code charge to foreign enterprises to make public balance sheet information. However, the OECD Declaration asks multinationals to do this -- it does not sanction governments making business confidential information public. Do you agree with this distinction?*

Yes. The OECD guidelines merely request that multinationals volunteer information on operating results, sales, new capital investment, sources and uses of funds, average number of employees, and other data. Multinationals are asked to supply additional information that would give "greater transparency to the activities of multinational enterprises." In its clarification of the guidelines, the OECD writes, "It is hoped that, in this way, the general level of disclosure of information by enterprises should be improved by supplementing where necessary, the disclosure requirements embodied in national laws and practices. Where national law and practice were less comprehensive, it was nevertheless intended that enterprises should take action under the Guidelines by publishing voluntarily the information called for."[11]

These guidelines do not sanction public disclosure by governments of multinational activities, but they do justify enhanced government data collection. A 1984 OECD review of the disclosure guidelines found that compliance "is best established where the recommendations of these Guidelines are backed by national legislation and practice."[12] Neverthless, in contrast with some G-7 countires, I believe that the operating and other information should never be divulged to the public, especially if a company requests

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[11] Organisation for Economic Co-operation and Development, *Multinational Enterprises and Disclosure of Information: Clarification of the OECD Guidelines* (Paris: OECD, 1988).

[12] Organisation for Economic Co-operation and Development, *The OECD Guidelines for Multinational Enterprises* (Paris: OECD, 1986), p. 27.

confidentiality.

11. *Is requiring foreign investors to name their ultimate beneficial owner (UBO) a guarantee that the information will be accurate?*

No it is not. Foreign investors with something to hide would not report accurately, if at all. Non-compliance is always a problem. I believe that most foreign investors would willingly supply information on the ultimate beneficial owner. The few that do not should know that they are violating federal regulations and are subject to fines and other penalties.

12. *While academic researchers always have a justified interest in getting more information, legislators have to consider other interests as well. As you know, BEA has to comply with the Paperwork Reduction Act, an act passed by large majorities in both Houses, whose intent was to relieve the burden on business by eliminating unnecessary paperwork required by the federal government. How can we reconcile these competing interests?*

Since the beginning of the 1980s, the Paperwork Reduction Act was at least partly responsible for weakening our data base on foreign investment, by allowing foreign firms to report their holdings on an enterprise rather than establishment basis. Yet today a bigger threat to the integrity of our information base stems from budgetary cutbacks. I have heard that the BEA may be unable to provide valuable series on the components of employment change and other aspects of direct investment because it simply cannot afford the extra work load any longer. Also, I have been told that the agency will not be able to revise previous data on direct investment to conform with the 1987 benchmark study for similar reasons.

Still, it is clear that many persons--in academia, in the government, and in the public at large--want to know more about the impact of foreign investment on the U.S. economy. Since it is unlikely that Congress will modify the

Paperwork Reduction Act, it should be willing to commit more resources to the BEA to help the agency improve the quality and timeliness of its data series. I believe that cost of allocating more resources to information gathering would be modest.

If the BEA had more staff and better equipment, I believe it could meet many the needs of researchers without having to increase the paperwork burden on firms. Better coordination among the various branches of government collecting foreign investment information is also essential.

13. *Dr. Woodward, please provide the Committee with a detailed list of the kinds of information you would like to get through BEA.*

Let me first restate, as I argued in my testimony before the Senate Commerce Committee, that the Bryant-Harkin bill correctly draws attention to the information gap on foreign investment. I am concerned, however, we would not substantially improve our data base even if the bill was passed. Therefore, I argue that the best approach to improving the quantity and quality of data would be to expand coverage to include some portfolio investments and to provide more detailed reports based on the direct investment information that the government already collects. The BEA should also consider adding new questions to its Benchmark Survey of Foreign Direct Investment in the U.S. (BE-12). My "wish list" would include the following items:

1. Annual reports of input sourcing by U.S. affiliates of foreign companies, including the nation of origin of these inputs and their industrial classification.

2. Separate tabulations of employment in joint ventures by industry and region.

3. Expanded coverage to include more information on smaller equity stakes. The BEA should provide reports by levels of ownership: from 5-10 percent, 10-25 percent, 25-50 percent, 50-99 percent, and for wholly owned affiliates.

4. Expanded export-import coverage to include capital imports (for example, machinery imported for use in U.S. plants), finished goods, semi-finished, and raw materials. Exports and import data should be on an establishment, not enterprise basis.

5. Reports of wage and occupational distribution of U.S. affiliates by industry and region, again on an enterprise level.

6. Annual reports of the components U.S. affiliate employment change. These reports would include job change through new plants, expansions, cutbacks, acquisitions, and sales of U.S. assets--broken down by industry and region.

7. Detailed tabulations on the number of new foreign-owned plants, expansions, mergers and acquisitions, joint ventures, and real estate purchases by detailed industry and geographic group. These tablulations would be similar to those now published by the International Trade Administration, but would be based on the BEA's surveys, not on announcements in the business press. (Employment and value would be better, but would run into disclosure problems.)

The CHAIRMAN. In your research on the book, "The New Competitors," did you find any evidence of the chilling effect?

Dr. WOODWARD. No. In fact, we did surveys of foreign investors where we asked for some of the information considered in the present legislation. They supplied it. Companies willingly supply information without any "chilling effect" or withdrawal from the U.S.

I said this before the House: I think that the disclosure issue can be quite exaggerated. We are talking about companies and basic information on them, and I do not think most of them have anything to fear or hide. When you do surveys of them, they generally will respond.

People say well, then, why do you not just continue to do surveys. The answer is that the government is in a unique position in collecting information from private companies. The government can pass a law that requires a company to respond and supply accurate information. Academic data from surveys always is spotty. Companies generally will supply data, but it is done in an uneven way, it comes in late, sometimes it takes a lot of prodding, and it is very expensive to collect. Therefore, I think the government could play a much greater role, but I have never found at all any resistance to information collecting. Yes, companies would resist further restrictions or pre-clearance. Those pose different problems. But that is not what these bills are about.

The CHAIRMAN. Well, I would like you to outline it, because there is a difference. Secretary Richardson says there is no difference at all. He says all the information that the Harkin bill would require is already available, and you say it is not available. And give us just a list of those things, and we will allow, of course, Secretary Richardson if we get that list to rebut it because what we are trying to do is find out the truth.

We have heard different witnesses on different sides.

Dr. WOODWARD. I understand the question. There is a lot of truth to the fact that we do not get a whole lot more information out of Bryant-Harkin. In fact, that is one of the things that I really find difficult about the bill. From my own research it is not going to advance it that much. It is not that kind of data I need. It focuses on the foreign parent company. When I look at Bryant-Harkin, unfortunately it is not much that I can use to understand the impact these companies have had in the U.S.

The CHAIRMAN. Well, will you list the information that is needed?

Dr. WOODWARD. I agree that we need more data on limited partnerships, smaller ownership stakes—Congressman Bryan says what he would ask would all fit on a postcard, if the investment is less than 5 percent of total ownership. I do not think we collect any information on limited partnerships at this point.

Again, the main thing that Bryant-Harkin focuses on is the ultimate beneficial ownership of assets. Now, the BEA surveys are concerned with that as well, but Bryant-Harkin focuses in much more detail on the foreign parent and asks them to supply much more information on their ownership characteristics. Multinationals can be very complicated as anyone who, like the CFIUS, has investigated the Minorco case recently would know. So, what is CFIUS sup-

posed to do right now? They have got to go out and read the Wall Street Journal to figure out the character of firms buying our resources. They are not getting the information from the government, although some of the information really is public anyway.

So, the Bryant-Harkin amendment does ask for needed information on the ultimate beneficial ownership. I think that and also in generally covering smaller investments, it is more comprehensive than present efforts.

I guess, the other thing that it does is collect data in cases where the company is not publicly traded. I think it would ask for income and operating statements from those private companies. There is some difficulty with the bill in that respect.

You mentioned Michelin before. When you think about Michelin being, I guess, a largely privately held company, they are going to complain well, why does Milliken not supply the same information as we do. Yet if you look at what France does, you would see that Milliken tried to invest in France, they would run up against a lot of pre-clearance requirements, and not just information gathering.

So there is this issue of reciprocity, but that is not the only point. The point is mainly, if you look at the OECD document I mentioned earlier, that multinational companies coming in across borders can be often very complex. I think companies should want to let the host government know that they are stable, what the nature of the parent's ownership is, that they would not violate any laws because they are a part of, say, some foreign country which we have a hostile status.

My list would include more than just simple ownership information. Still, Bryant-Harkin would give us that kind of information or more of it. So, there is something we could get out of it, though, let me again emphasize from my own research it would not advance it very much. My written testimony outlines some additional information, not in Bryant-Harkin, that we need to understand foreign investment.

The CHAIRMAN. Well, the hour is late. Secretary Richardson, did you have any closing comment?

We do appreciate—the committee is indebted to both of you for sticking around and testifying as you have. It has been very valuable to the committee.

Secretary RICHARDSON. Thank you, Mr. Chairman. I would like just as a citizen to say that I think we are all indebted to the committee for holding this hearing and addressing these issues and for developing the record that you have as a foundation for the Senate's further deliberations.

The one brief point I would add is that in general I believe, as I have said, that the information to be reported under the Harkin-Bryant bill is essentially duplicative of the information already reported to the U.S. government.

I left out, however, one point that Professor Woodward just alluded to.

Professor Woodward alluded to the fact that Harkin goes further down the scale in size of enterprises that require reporting. BEA's current data collection requires U.S. businesses with 10 percent or more foreign ownership to file reports with the Government. The top 200 investors in size are responsible for just under 70 percent of

all foreign direct investment in the United States. However BEA currently collects data from 24,000 investors. By requiring BEA to collect data based on foreign ownership of 5 percent, the Harkin bill would immensely increase the volume of paper that was generated by the government without, it would seem to us, significantly increasing the ability of the U.S. to make policy decisions, but we would be glad to respond to any further points that Professor Woodward has on this subject.

The CHAIRMAN. Well, we will leave the record open for further questions. We thank you both very, very much.

The committee will be in recess until the call of the Chair.

[Whereupon, at 1:05 p.m., the committee adjourned, subject to the call of the Chair.]

EXECUTIVE CHAMBERS

HONOLULU

JOHN WAIHEE
GOVERNOR

STATEMENT BY GOVERNOR JOHN WAIHEE

BEFORE THE U.S. SENATE COMMITTEE ON COMMERCE,
SCIENCE AND TRANSPORTATION

THE HONORABLE ERNEST HOLLINGS, CHAIRMAN

REGARDING DISCLOSURE OF INFORMATION ON FOREIGN DIRECT INVESTMENT

July 30, 1989

Mr. Chairman and Members of the Committee:

Last year, I was the first governor, and probably the only governor, that went on record in support of the Bryant/Harkin amendment. I did so for one simple reason: state policymakers need to have accurate, timely information if we are to fashion coherent economic policies.

A July 9 article in the Sunday L.A. Times makes the case succintly:

> "The balanced conclusion must be that foreign investment is neither an unmitigated boon nor a clear and immediate danger. What is needed is a systematic and objective review of the impact of foreign investment in the United States. Lacking such an analysis, policymakers are more likely to be swayed by the pleadings of the complacent and the anxious than by a pragmatic and accurate grasp of reality."

"Systematic and objective reviews" cannot occur without hard information. There are existing mechanisms at the federal level to collect data. However, the spirit of deregulation and budget cutting measures have reduced minimum thresholds for reporting, and have slowed down the process and decreased the amount of analysis and reporting of the information that is collected. This has often resulted in an aggregation of data that is useful to only the most macroeconomic of analysts. Ironically, these measures have taken place without any appreciable reduction of paperwork and red tape.

Some of the pressure for disclosure legislation is the result of frustration with the current system of collection and reports. Increases in the investment volume and sector variation have also caused unprecedented public concern. Polls show up to 80% of the American public wanting foreign investment to be more closely regulated. So far, both the public and the media have focused largely on anecdotal information and conflicting forecasts.

One nationally publicized study overestimated Japanese investment in Hawaii real estate by as much as 50% by mixing construction and renovation figures with property acquisition; counting cumulative totals on investment rather than "last sale" or net values for the reporting period; mixing hard data with soft data from media accounts; and, attributing construction costs that will occur over a period of years to a single year.

In the absence of official reports, "studies" such as the one described above become the truth as perceived by the public, causing immeasurable harm to our ability to implement rational policies.

In contrast, a transaction by transaction search by the State for the fifteen months perceived to be the period of greatest real estate activity indicated that only 2% of the transactions can be attributed to Japanese buyers. That information, I believe, contributed to our ability to work with the State Legislature in dealing with this volatile issue in a careful and rational manner.

As the governor of a state that has received maximum attention on this issue, I believe disclosure legislation should address the following issues:

-- Foreign direct investment disclosure is most effectively implemented at the federal level;

-- In the absence of adequate disclosure at the federal level, states may be forced to enact their own laws, creating a patchwork of regulation across the United States;

-- In addition to gathering information, there must be adequate analysis and reporting;

-- A designated agency in each state should have access to raw data to facilitate local decision-making;

-- The minimum reporting threshold should be $5 million for any single acquisition or combination of acquisitions; and

-- Consideration should be given to regional reporting to allow for differences in sectors and industries.

In closing, the fact that we all live in a global economy does not mean that we can afford to have the market dictate the economic, social and environmental future of our islands and our nation. We are committed to the principles of self-determination, and look forward to the support of our national and international partners in achieving our mutual goals.

Respectfully submitted,

JOHN WAIHEE
GOVERNOR

Statement of the Honorable Richard F. Celeste
Governor of Ohio

Submitted to the Senate Committee on Commerce,
Science and Transportation

Hearing on Foreign Investment Legislation
July 11, 1989

As the Senate Commerce Committee considers S. 289, the Foreign Disclosure Act of 1989, and other legislation, I want to offer my views on the importance of foreign investment in the economic resurgence of Ohio and other states.

According to the recent Department of Commerce study, "Foreign Direct Investment in the United States," in 1987 Ohio ranked second among states in the value of its foreign investment transactions. With this level of foreign investment, Ohio's experience is especially relevant to the Senate discussion.

Further, I believe my experience, and that of other Governors, can help the public, the Executive Branch, and Congress better understand the positive role of foreign investment in the nation's economy as well as that of individual states.

States are adapting to the change from the post-World War II period of unchallenged U.S. leadership to today's multi-polar, integrated world economy.

For some analysts and political leaders, the rapid growth of foreign investment during this decade signals the decline of America, and less control over our economic destiny. Others see proof of the success of the previous Administration's economic policies.

Neither view is adequate. The real problem is not too much foreign investment, but not enough in new or renovated productive capacity. About 85% of foreign holdings are in passive portfolios, largely made up of Treasury bonds financing the federal budget deficit.

Of course, the rapid increase in foreign holdings in this country has also been driven, until recently, by the depreciation of the dollar. According to some, this has turned into a fire sale of American assets. But this partly artificial trend will end only when a weak dollar is no longer the main weapon in intermittent efforts to cut the U.S. trade deficit.

Balanced macroeconomic and trade policies committed to industrial renewal, improved workforce skills, and reduced military spending are the best alternative to an internal protectionism that would arbitrarily restrict foreign investment. They are the best way to ensure foreign investment that builds rather than undermines our economic security.

We already have compelling examples of the positive role of foreign investment. While some regions of the country benefited disproportionately from massive federal military spending, others found that foreign investment was a critical source of economic renewal. For example, Japanese auto investments helped bring the nation's attention to the revival of the Midwest manufacturing sector.

Further, foreign investors often buy companies or plants discarded by restructuring American firms. Many major American firms have become "global warriors." Like their Japanese or European counterparts, they are increasingly oriented to international markets.

And, like it or not, they often build new production capacity close to those markets, discarding plants and operations in the United States. But many of these closed plants are viable even when they are no longer part of the global game plan of their former parent. Often, foreign investment gets them back into operation.

However, the importance of foreign investment should not be used as a pretext to block other, needed reforms. For example, Congress has considered limiting interest deductions that drive leveraged buyouts and hostile takeovers. Congress should not be deterred from such consideration on the grounds that foreign takeover bids will thereby gain an advantage. If necessary, Congress should find means to curb foreign hostile takeovers without impeding other kinds of foreign investment.

In an important new study, "Facing World Challenges: U.S. Manufacturing in the 1990's," MIT economists Rudiger Dornbusch and Paul Krugman, writing with Yung Chul Park of Korea University, warn against new restrictions on foreign investment, which they think is basically positive:

> "By imposing extraordinary disclosure requirements on foreign firms, however, the U.S. government would put a burden on these firms that would discourage inward foreign direct investment."

An integrated world economy presents major challenges to leaders at all levels of governments. But, in itself, foreign investment is neither a threat nor a panacea but an opportunity. Our trading partners have used American investment to move their economies to world leadership. Ohio and other states are showing that foreign investment can be used in the same way.

Thank you for the opportunity to present my views on this important issue.

COMMENTS OF HONDA NORTH AMERICA, INC.

REGARDING S. 289,

FOREIGN OWNERSHIP DISCLOSURE ACT

July 24, 1989

Honda appreciates the opportunity to submit its views on the issue of foreign investment in the U.S. We would like to express our opposition to S. 289, the Foreign Ownership Disclosure Act. The bill establishes detailed foreign investment registration requirements and permits public disclosure of confidential business information.

Since Honda began operations in the U.S. 30 years ago, the company has grown from a seller of small motorcycles to become the United States' fourth largest automobile manufacturer. This growth reflects Honda's basic philosophy of manufacturing and purchasing in the markets we serve. Our direct investment in the U.S. exceeds $2 billion in plants and equipment. Honda's manufacturing facilities have grown to include a motorcycle manufacturing plant, an automobile manufacturing facility, an automobile engine plant and a lawnmower and engine plant. A second automobile plant will be opened later this year. Nearly half the cars we sell in the U.S. are built here.

We at Honda view our U.S. investments not as threats, but as additional signs of our commitment to the American economy and to U.S. workers. In Ohio, Honda employment has reached over 7500 people. Our employees are trained to perform highly skilled jobs and receive a wage rate competitive in the auto industry. Additionally, our U.S. plants indirectly produce hundreds of jobs across Ohio and the rest of the nation. Last year, Honda's

Ohio operations purchased approximately $1.5 billion in parts and raw materials from 150 U.S. original equipment suppliers. Our U.S.-made vehicles will reach 75% domestic content no later than 1991.

Honda is currently exporting cars to Canada, Japan and Taiwan. We plan to increase our car exports to 70,000 units in 1991. Our Marysville motorcycle plant is the sole source for the Goldwing motorcycle, which is exported worldwide.

Arguments have been made that foreign investment is not beneficial to the U.S. economy. We believe that this is not true. For example, Honda's U.S. auto plant is the most integrated motor vehicle manufacturing facility in the United States. Transfers to the U.S. of technology and of Honda's unique manufacturing process have occurred. The operations performed at our U.S. auto plant include stamping, plastic injection molding, welding, painting, sub-assembly and assembly, testing, quality assurance and shipping.

We not only manufacture vehicles and their engines in the U.S., but we have expanded our U.S. research, design and engineering activities as well. In fact, Honda's future product plans call for the introduction of a new model designed and developed in the United States. In short, we plan to become a totally self-reliant member of the American automobile industry.

Turning to S. 289, Honda believes that further foreign investment registration requirements are unnecessary. There are at least 18 different laws already on the books requiring foreign investment reporting. The Departments of Commerce, Treasury, Agriculture, and the Securities and Exchange Commission already collect comprehensive information on foreign investments. There is also an Interagency Committee on Foreign Investments that reviews any direct investment which might adversely affect U.S. national interest. In addition, the President has recently been granted the authority to prohibit any foreign acquisition, merger, or takeover, should it be determined that there is a threat to national security.

Honda currently provides the U.S. Government with the required foreign investment information, which is kept confidential. We are proud and open about our U.S. investments.

Our primary objection to S. 289 is that it allows the broad disclosure of line-of-business information to consultants, committees and subcommittees of Congress, government agencies and "qualified researchers." This kind of information, when made available to the public, would allow competitors to know the costs, profits and cashflow a foreign company is generating at a particular plant. That kind of disclosure is discriminatory and would surely have an anti-competitive effect. Furthermore, the bill applies no penalties for unlawful disclosure, and the confidentiality restrictions do not apply to Congress.

At a time when the U.S. is emphasizing an open trade and investment policy, imposing these requirements would be highly discriminatory and would be counterproductive to accomplishing future international trade objectives.

If the United States is committed to improving its competitiveness in the integrated world economy, it must focus its resources on capital investment, technology and human resources. The flow of these resources from abroad will provide valuable contributions to America's national economic progress in the future. S. 289 sends the wrong message.

Thank you for considering our views.

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

UNITED STATES SENATE

, STATEMENT ON

FOREIGN INVESTMENT DISCLOSURE LEGISLATION

SUBMITTED ON BEHALF OF

GEORGETOWN INDUSTRIES, INC.
1901 ROXBOROUGH ROAD, SUITE 200
CHARLOTTE, NC 28211

Georgetown Industries, Inc. submits this statement for the Committee's hearing record regarding H.R. 5 and S. 289, the "Foreign Ownership Disclosure Act of 1989." Georgetown opposes this legislation and urges the Committee to reject it, as the full Senate already did overwhelmingly during debate on the trade bill two years ago. Georgetown opposes this legislation for the following reasons:

- As a private corporation, Georgetown is not currently subject to the public disclosure requirements referred to in the legislation, and neither are its privately-owned American competitors. The Bryant-Harkin bill, if enacted, would unfairly single out Georgetown for disclosure of proprietary business information, solely on the basis of its foreign ownership.

- The United States has maintained an open investment policy at home and has worked to break down investment barriers for American companies abroad. The United States needs investment, whether of domestic or foreign origin, to promote economic growth and increase the competitiveness of U.S. industry. The proposed legislation would be a significant deterrent to new capital inflows and would influence many investors to direct their funds to alternate opportunities where the host countries do not require such disclosures.

- The sponsors of this bill readily admit that numerous federal agencies already collect data on foreign direct investment. Before imposing additional reporting burdens on private companies, these current reporting schemes should be evaluated so as to avoid wasteful duplication.

Georgetown is a private U.S. corporation with foreign ownership. Foreign-owned companies should be and in fact are required to comply with the same laws applicable to U.S. owned companies; no one disputes this. Thus, Georgetown deals with the government as would any other private U.S. company: it obeys the same laws, lives with the same regulations, and pays the same taxes. If a foreign-owned company seeks to raise capital in the U.S. public markets, it should be and is subject to the disclosure requirements of the securities laws. However, a company should not be discriminated against merely because it is foreign-owned. If U.S. citizens are not required to make detailed public disclosure of their investments, neither should foreign investors.

There are distinct advantages to being a private company in the United States, including privacy of financial information, and such advantages should not be taken away on the basis of foreign ownership. Many foreign investors are averse to disclosure of their private investments for various reasons, including their experience and practice in their respective home countries. They do not want to be forced into the "fish bowl" environment of disclosure concerning their private investments in the U.S., including the amounts, specific identity, changes in portfolio position, and financial performance. The Bryant-Harkin bill, if enacted, would single out foreign investors for disclosure of proprietary line of business information which their American-owned competitors would not be forced to make. It would impose administrative burdens on Georgetown and other foreign investors, but not on their competitors. It could ultimately have the effect of discrimination against Georgetown's products and employees. Georgetown should have the same right as any other privately held company in the U.S. to choose between being private or public. The status and degree of its ownership shouldn't determine whether such a choice is eliminated or the benefits of that choice are removed.

Foreign direct investment promotes the growth and competitiveness of U.S. industry and should be encouraged, not discouraged. The United States has pursued an open and nondiscriminatory investment policy in order to promote economic development and attract investment capital at reasonable interest rates. The U.S. must compete for foreign investment capital with other countries of the world, including the industrial economies of the EEC and Japan, where the governments have a significantly greater sensitivity to and respect for the privacy of investments. The proposed legislation would be a significant deterrent to new capital inflows and would influence many investors to

direct their funds to alternate opportunities where the host countries do not require such disclosures.

Georgetown can testify that there is nothing sinister about foreign investment -- its effects have been only beneficial. Georgetown has assets of almost one-half billion dollars and a payroll of approximately 4,000 employees in ten states. Virtually none of this investment existed even twenty years ago. Thus, 4,000 American jobs have been created with foreign capital; further, there is the very significant ripple effect of investment stimulated by the thousands of firms that are suppliers to Georgetown. In addition, it should be pointed out that Georgetown's investors have never asked for nor received a penny of dividends on their American investment. The investments have been a one-way influx of capital made for long-term investment purposes in the U.S.A.

In opposing the Bryant-Harkin measure, the Bush Administration has warned: "Singling out foreign direct investors constitutes a sharp change in U.S. policy from one of open investment to one of discrimination. This shift in policy would discourage foreign direct investment in the United States resulting in slower economic growth, productivity and job creation and triggering higher interest rates that could hurt a wide range of Americans..."[1] Similarly, the Chairman of the Federal Reserve Board has cautioned: "[T]he Federal Reserve Board believes that the bill, if enacted, could have a potentially adverse effect on foreign investment in the United States at a time when our economy remains highly dependent on the inflow of savings from abroad to finance our budget deficit and to sustain the overall rate of investment in the U.S. economy at reasonable interest rates."[2] Congress should heed these warnings.

In addition, passage of H.R. 5 and S. 289 would contradict principal trade negotiating objectives of the United States in current multilateral trade talks -- objectives which Congress specifically endorsed in the Omnibus Trade and Competitiveness Act of 1988:

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1 Letter from Secretary of Treasury Nicholas Brady and other Cabinet officers to Members of Congress (February 16, 1989).

2 Letter from Alan Greenspan, Chairman, Federal Reserve Board of Governors, to Members of Congress (February 16, 1989).

"The principal negotiating objectives of the United States regarding foreign direct investment are to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment;..."[3]

While the United States is actively pursuing initiatives in GATT to eliminate government barriers to foreign direct investment, it should not impose discriminatory requirements of its own.

Although Georgetown Industries is owned by a foreign entity, we want to stress that we are American, our 4000 employees are Americans, and we do most of our business here in the United States. The sponsors of this legislation repeatedly allude to the "evils" of foreign investment in the U.S., alleging that foreign investment has resulted in greater foreign influence in U.S. policymaking. Contrary to this suggestion, we believe the mere fact of foreign ownership has nothing to do with, for example, trade policy. In fact, our company has taken a strong **pro-American** trade stance because of our subsidiary Georgetown Steel Corporation's role as a major domestic producer of steel wire rod. As this Committee knows, the domestic steel industry has been the victim of unfair trading practices of other nations. As an **American** steel producer, Georgetown has initiated numerous dumping and countervailing duty cases against foreign companies in an effort to restore fair trade in steel. We are an active member of the American Iron and Steel Institute (AISI) and we have worked with the Committee Chairman in his effort to improve and strengthen U.S. trade laws. We have taken these actions because they are in the best interests of Georgetown Industries, not because of some invisible foreign influence.

Finally, sponsors of this legislation emphasize that at least sixteen different U.S. agencies currently collect data on foreign investment, but claim that existing information is unusable, inadequate or unavailable to the people who really "need" it. Georgetown asks the Committee: If Washington is genuinely concerned about waste, fraud and abuse, shouldn't it evaluate these sixteen data collection efforts to determine their effectiveness and adequacy before setting up one more mechanism and imposing yet another paperwork burden on U.S. business?

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[3] Sec. 1101(b)(11) of the Omnibus Trade and Competitiveness Act of 1988.

In conclusion, Georgetown urges the Committee to reject H.R. 5 and S. 289. The United States should continue to provide foreign investors with the same fair, equitable and nondiscriminatory treatment that it expects other governments to provide to American-owned companies. It is American employees, not foreign investors, who would ultimately be hurt by the adverse effects of this legislation.

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(703) 938-5634

June 30, 1989

Ms. Sally Susman
Professional Trade Staff Member
Senate Committee on Commerce, Science and Transportation
SH-428 Hart Senate Office Building
Washington, D.C. 20510

S. 289

Dear Sally:

At your request, I have enclosed, on behalf of the Organization for Fair Treatment of Foreign Investment ("OFTII"), a memorandum comparing the reporting requirements of S. 289 to those of the Securities Exchange Act of 1934. As we have discussed, the major differences are:

1. The reporting requirements of the securities laws apply equally to both U.S. and foreign investors or issuers, while the reporting requirements of S. 289 apply only to foreign persons.

2. Under the securities laws, investment in private companies, ordinary real estate investments, and small investments (5% or less) in publicly held companies need not be disclosed;

3. In addition, except for persons making tender offers, no financial statement information of purchasers subject to reporting is required by the securities laws.

I have also enclosed a copy of the 1979 booklet from the Department of the Treasury Foreign Investment in the United States, which I understand is now being updated. It will provide a summary of Federal laws regarding foreign investment in the United States. Part III contains information on U.S. investment policy, reporting requirements and data. Generally, please note the following statement on page 29:

> With a few exceptions, the United States does not impose special restrictions on foreign investment in this

country. Its long standing policy towards international investment is to neither promote or discourage investment flows or activities.

Specifically regarding the financial reporting requirements of the Exchange Act and S. 289, please see page 16-18 and the explanation on page 16:

> The U.S. securities laws often call for more disclosure than foreigners are accustomed to providing. Furthermore, the form and content of the financial statements, as well as the requirements for independent audits, can present foreign issuers with difficult problems. The SEC has proved willing in the past to accommodate foreign issuers as to the nature of the information disclosed and to permit reconciliation, rather than reconstruction, of accounting data.

I have also enclosed a copy of my September 22, 1987 letter to you. While the comments regarding the "Bryant amendment" are now out-of-date, the information found on page 3 and 4 may still be helpful.

OFTII's members include:

AKZO of America, Inc.
Allied Lyons North America Corp.
BASF America Corp.
BATUS Inc.
Beecham Inc.
Gold Fields American Corp.
Hoechst-Celanese Corp.
Moet-Hennessy
ICI Americas
Nestles Holdings, Inc.
Siemens Capital, Inc.
Sony Corporation of America
Thorn EMI (U.S.A.) Inc.
Unilver U.S.
Volkswagen of America, Inc.
Volvo of North America Corp.

If I can be of further assistance, please let me know.

With best regards,

F. Eugene Wirwahn

Enclosures

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M E M O R A N D U M

Re: Reporting Requirements Under the Securities Exchange Act of 1934 and S. 289

Date: June 30, 1989

I. Introduction

This memorandum compares the reporting requirements under S. 289, the "Foreign Ownership Disclosure Act of 1989" and the reporting requirements under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

U.S. securities laws apply equally to U.S. and foreign investors or issuers who engage in securities activities subject to U.S. jurisdiction. The Exchange Act imposes continuous disclosure requirements on public companies, certain shareholders of public companies, and officers, directors and control persons of public companies who engage in purchase and/or sale transactions involving the issuer's securities. Mandatory disclosure documents must be filed with the Securities and Exchange Commission ("SEC"), and in some cases, with the issuer and the national securities exchange on which the security is traded. U.S. securities laws and practices apply equally to U.S. and foreign investors or issuers who engage in securities activities subject to U.S. jurisdiction.

The common denominator for all Exchange Act reporting requirements is that the security involved be one of a publicly held company whose securities are registered with the SEC under the Exchange Act. Under the federal securities laws, no reporting of any kind is required for foreign investment in private companies or public real estate; however, holdings through public Real Estate Investment Trusts or public limited partnerships may have SEC reporting requirements.

S. 289 would require the registration of "a significant interest in a U.S. property" and of "a controlling interest in a U.S. business enterprise" if held or acquired by a "foreign person." "U.S. property" includes real property and any "business

enterprise," while "U.S. business enterprise" includes not only publicly, but privately held corporations, partnerships, associations, trusts or other organizations organized under U.S. laws. Thus, the reporting requirements under S. 289 for disclosure of both public and private company as well as real estate investments are significantly different and broader than those required for investments under the federal securities laws, which are limited to securities of a publicly held company whose securities are registered with the SEC under the Exchange Act.

II. Exchange Act

A. Section 12: Registration Requirements for Securities

Section 12 of the Exchange Act defines what constitutes publicly held companies for reporting purposes. Such companies include:

> a) All companies whose stock is traded on a National Securities Exchange (e.g., New York Stock Exchange, American Stock Exchange, etc.). [§ 12(a)].
>
> b) Any company with over $5,000,000 in total assets and over a specified number of shareholders. If 750 or more shareholders, the Company must report within 120 days after the first fiscal year in which that number of shareholders exists. If 500-749 shareholders, the Company need only report 120 days after the second fiscal year in which such number exists. [§ 12(g)].

Section 12 reporting companies must file annual reports with the SEC on Form 10-K. Investors whose beneficial ownership of reporting companies exceeds 5% are disclosed in the 10-K. However, such disclosure is limited to the class of the security, name and address of the beneficial owner, nature of the ownership, and percent of the class owned. This is significantly less than the disclosure required by S. 289.

B. Section 13: Periodical and Other Reports

Under § 13(d) of the Exchange Act, and the rules thereunder, the acquisition of more than 5% of any class of a public company's securities requires the purchaser to file disclosure documents concerning the acquisition.

Specifically, Rule 13d-1(a) states:

> Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (d) of this section, is directly or indirectly the beneficial owner of more than 5 percent of such class shall,

within 10 days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, and to each exchange where the security is traded, and file with the Commission, a statement containing the information required by Schedule 13D. Six copies of the statement, including all exhibits, shall be filed with the Commission.

The disclosure required on Schedule 13D is as follows:

1) Item 1. Security and Issuer.

Statement as to class of equity security or securities involved and the name and principal office address of the issuer.

2) Item 2. Identity and Background.

The person(s), entity or group must disclose the following background information:

a) Name;

b) Residence or business address (principal office);

c) Occupation or employment, including company name and address, or principal business activity;

d) Criminal violations in the past 5 years;

e) Civil proceedings involving federal or state securities laws;

f) Citizenship.

3) Item 3. Source and Amount of Funds or Other Considerations.

Source and amount of consideration used to make the purchase, including borrowing transactions.

4) Item 4. Purpose of Transaction.

The purpose or purposes of the acquisition of securities of the issuer. Description of any plans or

proposals which the reporting persons may have which relate to or would result in:

a) The acquisition by any person of additional securities of the issuer, or the disposition of securities of the issuer;

b) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the issuer or any of its subsidiaries;

c) A sale or transfer of a material amount of assets of the issuer or of any of its subsidiaries;

d) Any change in the present board of directors or management of the issuer, including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the board;

e) Any material change in the present capitalization or dividend policy of the issuer;

f) Any other material change in the issuer's business or corporate structure, including but not limited to, if the issuer is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote is required by Section 13 of the Investment Company Act of 1940;

g) Changes in the issuer's charter, bylaws or instruments corresponding thereto or other actions which may impede the acquisition of control of the issuer by any person;

h) Causing a class of securities of the issuer to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;

i) A class of equity securities of the issuer becoming eligible for termination of registration pursuant to Section 12(g)(4) of the Act; or

j) Any action similar to any of those enumerated above.

5) Item 5. Interest in Securities of the Issuer.

The aggregate number and percentage of each class of securities identified, in Item 1, beneficially owned by the party(s) named in Item 2, must be disclosed.

6) Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer.

A description must be given in the report regarding any contracts, arrangements, etc. among the parties listed in Item 2 with respect to the securities of the issuer.

7) Item 7. Materials to be filed as Exhibits.

Copies of written agreements relating to the filing of joint acquisition statements and copies of all written contracts, agreements, etc., relating to matters disclosed in Items 3, 4 and 6, supra.

C. Section 14(d): Tender Offers

Under S. 289, if an interest of 25% or more is acquired in a business enterprise that has assets in the United States with market value in excess of $20 million, or had gross sales from the U.S. in the most recent fiscal year in excess of $20 million, considerable financial data conformed to U.S. accounting principles and information regarding U.S. facilities and directors and executive officers of the purchaser are required. No such requirement exists on Schedule 13D, but in the case of a tender offer, disclosure of financial information is required.

Under § 14(d), if a person, firm or entity makes a tender offer for the securities of a § 12 company, and after such tender offer would be the beneficial owner of more than 5% of a class of securities, that person must make extensive disclosure on Schedule 14D-1. This schedule is perhaps the most extensive reporting document filed with the SEC; and every possible aspect of the transaction, no matter how minute, must be disclosed. Furthermore, unlike Schedule 13D disclosure, the bidder in a tender offer (other than a natural person) must disclose financial statement information.

D. Section 16: Directors, Officers and Principal Stockholders

Under § 16(a) officers, directors and control persons (persons owning more than 10% of a class of stock) of a company which

becomes subject to Exchange Act registration under § 12(g) must file a Form 3 with the SEC and each exchange on which the security is traded. Form 3 is a brief report disclosing information concerning the beneficial ownership of stock. In addition, any person who, after the company becomes subject to Exchange Act reporting requirements, becomes an officer, director or beneficial owner, must also file a Form 3. The Form must be filed within 10 days after the occurrence of one of these events. Finally, if, during any calendar month, an officer, director or control person experiences a change in his/her beneficial ownership, such change must be disclosed on Form 4.

Thus, any purchase or sale of a company's security by this special group of persons must be reported. However, as Forms 3 and 4 reveal, the disclosure required is not very extensive.

III. S. 289

A. Registration of Foreign-Held Interests in United States Property.

Any "foreign person" that acquires or holds, directly or indirectly, "a significant interest in a U.S. property" or "a controlling interest in a U.S. business enterprise" must register with the Secretary of Commerce. If such interest is acquired after the effective date of the regulations to be promulgated by the Secretary of Commerce under the Act, the filing deadline is thirty days after acquisition of the interest. If such interest is held, directly or indirectly, when those regulations become effective, the filing deadline is 180 days of their effective date.

A "significant interest" in a U.S. property is defined in § 2 (m)(6):

> any equity or ownership interest that exceed 5% of the total equity or ownership interests in a U.S. property that (1) has assets, or in the case of real property, is an asset in the U.S. with a market value in excess of $5 million or (ii) had gross sales from the U.S. in the most recent fiscal year in excess of $10 million.

"U.S. property" is defined in § 2 (m)(3) and (4) and includes:

(A) any U.S. business enterprise; and (B) any real property located in the U.S., including minerals. Contiguous properties are considered as one.

A "business enterprise" [§ 2 (m)(3)] is:

(A). Any sole proprietorship, branch, partnership, associated group, association, estate, trust, corporation, or other organization organized under the laws of

the United States or of a State or that has its principal place of business in the U.S.; and (B) any two or more such enterprises which are acting in concert.

A "controlling interest" [§ 2 (m)(7) is:

an equity or ownership interest that exceeds 25% of the total equity or ownership interests in a business enterprise that (A) has assets in the United States with a market value in excess of $20 million or (B) had gross sales from the United States in the most recent fiscal year in excess of $20 million.

B. Contents of Registration

Under § 2 (c) of S. 289, a foreign person who has acquired or holds a significant interest in a U.S. property or business enterprise must provide the following information to the Secretary of Commerce:

1. the identity, address, legal nature, industry and nationality of the foreign person;
2. the date on which the foreign person acquired the interest;
3. the relation of the foreign person to the U.S. property;
4. the name, location and industry of the U.S. property;
5. the market value of (A) the assets of a U.S. business enterprise or (B) U.S. real property.
6. The percentage size of the interest acquired.

If a foreign person acquires or holds a controlling interest in a U.S. business enterprise, the following additional information must be furnished to the Secretary of Commerce [§ 2 (d)]:

(1) with respect to the foreign person, an English translation of the information that is publicly disclosed in the home country as to its balance sheet and income statement; (A) statement of changes in financial condition and statement of sales, assets operating income, and depreciation by industrial segment, prepared in accordance with generally accepted accounting principles or in accordance with statutory or regulatory accounting principles and accompanied by explanatory notes and any current auditors statements and reports; (B) the location of all facilities in the U.S. and (C) the identity and nationality of each director and executive officer.

(2) with respect to the U.S. business enterprise: (A) a (i) balance sheet and income statement (ii) statement of changes in financial condition and (iii) statement of sales, assets operating income, and depreciation by industrial segment, prepared in accordance with generally accepted accounting principles or in accordance with statutory or regulatory accounting principles and accompanied by explanatory notes and any current auditors statements and reports; (B) the location of all facilities in the U.S.; and (C) the identity and nationality of each director and executive officer.

A foreign person must file annual reports within 90 days after the end of the calendar year to report any changes in his registration. [§ 2 (e)]. A foreign person may substitute other documents which contain the required information. [§ 2 (f)(1)].

Under § 2 (f)(2), if a foreign person acquires an interest required to be registered through his acquiring or holding stock in a U.S. business enterprise, which is an "issuer" under the Exchange Act, the foreign person can file the information filed by the issuer with the SEC under sections 12, 13,14 and 15 (d) of the Exchange Act.

IV. Conclusion

The most significant differences between the S. 289 and the securities laws are:

1. The reporting requirements of the securities laws apply equally to both U.S. and foreign investors or issuers, while the reporting requirements of S. 289 apply only to foreign persons.

2. Under the securities laws, investment in private companies, ordinary real estate investments, and small investments (5% or less) in publicly held companies need not be disclosed;

3. In addition, except for persons making tender offers, no financial statement information of purchasers subject to reporting is required by the securities laws.

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United States Council for International Business

ABRAHAM KATZ President

Serving American Business as U.S. Affiliate of

The International Chamber of Commerce
The International Organization of Employers
The Business and Industry Advisory Committee to the OECD
The ATA Carnet System

July 10, 1989

The Honorable Ernest F. Hollings
125 Senate Russell Office Building
Washington, D.C. 20510-4002

Dear Senator Hollings:

I understand that the Senate Commerce, Science and Transportation Committee will hold a hearing on July 11 on pending legislation on federal government collection of data on foreign investment in the U.S., and that the Committee will have on its agenda consideration of the "Foreign Ownership Disclosure Act."

I am writing on behalf of the United States Council for International Business to reiterate our opposition to this draft legislation, expressed on numerous previous occasions, which we believe would discourage needed foreign investments in the U.S. and could damage the interests of U.S. companies abroad.

The United States Council for International Business represents American business positions in Washington and in the major international economic institutions. Its primary objective is to promote an open system of world trade, finance and investment. Through its affiliations with the International Chamber of Commerce (ICC), the Business and Industry Advisory Committee to the OECD (BIAC), and the International Organization of Employers (IOE), the Council officially consults with the United Nations system (including the GATT), the OECD and the International Labor Organization (ILO).

First, we fear that restricting or discriminating against foreign direct investment in the U.S. could seriously damage the interests of U.S. companies by encouraging the maintenance and proliferation of barriers to their investments abroad, investments that are often essential to their competitiveness and trade expansion strategies.

Second, by introducing a new obstacle to foreign investment, such legislation could seriously undermine the U.S.'s current efforts to reduce international barriers to investment, particularly through the GATT negotiations on investment, which the U.S. took the lead in placing on the Uruguay Round agenda.

Third, by imposing more onerous reporting requirements on foreign firms than on U.S. companies, the legislation could also conflict with U.S. international obligations under the OECD National Treatment instrument, at the same time that the U.S. is attempting to strengthen OECD governments' committment to national treatment of foreign investors.

Fourth, the legislation does not conform with the standard practices of the major industrial countries, as reviewed in a recent U.S. Treasury Department survey (completed December 1988). This survey found that while these countries collect and publish data in aggregated form, they do not require disclosure of detailed and confidential information to a large number of outside parties.

Moreover, there is ample evidence that foreign direct investment is playing an important role in financing our stubborn trade deficit, and in providing the capital, skills, and jobs that enhance U.S. competitiveness. Fundamentally altering the treatment of information without input from the private sector would be unfair and raise serious questions about the commitment of the U.S. Government to equitable information collection processes.

Lastly, much of the legislation is duplicative of existing registration requirements under the Survey Act. Pursuant to the Survey Act, the Bureau of Economic Analysis within the Department of Commerce already collects, analyzes, and publishes regularly information on foreign investment in the U.S. Although there may be some areas where the quality and reporting of data might be improved, the draft legislation does not address them.

For these reasons, we have strongly opposed the draft "Foreign Ownership Disclosure Act." The International Chamber of Commerce, the global business organization of which the U.S. Council is the U.S. affiliate, has also expressed its opposition in a letter conveyed by the U.S. Council to the Speaker of the House on April 27. We hope that you will take these views into consideration when the Committee meets on July 11.

Sincerely,

Abraham Katz
President

STATEMENT OF ROBERT A. DENMAN, DIRECTOR, INTERNATIONAL AND PUBLIC AFFAIRS, NATIONAL FARMERS UNION

The National Farmers Union, an organization with 300,000 member families in major agricultural states, has a particular interest in the issue of the right of the American people to know the extent of foreign ownership and control of agricultural land and other productive resources.

We commend you, Mr. Chairman, and the committee for holding this hearing on the adequacy on foreign investment data collection systems. We observe that, except for agriculture, there is no ongoing monitoring and publication of data on foreign investment.

As the protagonist of family-scale agriculture, National Farmers Union has had a position opposing alien ownership or control of U.S. farm land dating back as far as 1911, 1913 and 1919. A total of 25 states have had constitutional or statutory retrictions on alien ownership or control.

In 1978, the Farmers Union was the principal rural advocate of S. 3384, sponsored by Senator Herman Talmadge of Georgia, chairman of the Senate Agriculture committee and H.R. 13356, sponsored by Rep. Richard Nolan of Minnesota, chairman of the House Agriculture family farm subcommittee, and 75 other members of the House.

This legislation emerged as the "AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE ACT OF 1978," (AFIDA) Public Law 95-460.

Farmers Union pressed for adoption of this legislation because it appeared, from unofficial sources, that foreign ownership and control of U.S. farm land had tripled from 1974 to 1977.

In June, 1978, Senator Talmadge received from the General Accounting Office (GAO) a report on alien ownership which declared that "foreign purchases are of national concern and raise serious questions of national policy." GAO noted that "very little data on foreign land ownership now exists in federal, state or local government agencies."

The GAO recommended legislation for a nationwide registration system for foreign land owners, placing the burden of disclosure upon the landowners and thereby not requiring a large agency to maintain the records.

As a result of this legislation, agriculture is the only sector in which data is now available on alien ownership and control. For all other industrial sectors, foreign owners are anonymous. Some statistical data is available but ownership is confidential.

While it is neither perfect, nor airtight, the AFIDA statute is satisfactory enough so that delegates to the 87th annual convention at Little Rock, Arkansas, March 5-9, recommended it as a prototype for other sectors:

"Foreign individuals, corporations or governments should be required to disclose to appropriate agencies their ownership of U.S. business, financial, energy or real estate assets, in a manner comparable to procedures in the Agricultural Foreign Investment Disclosure Act of 1978. Citizens of the U.S. have a right to know the extent of such ownership or control so that remedial steps may be taken."

Farmers Union recognized in 1978 that the AFIDA system would be helfpul even though it contained no restriction on foreign investment.

As a matter of law and precedent, regulation of land ownership and use has been left to the states. But, without clear evidence on the extent of alien ownership,

state legislatures have been uncertain on the need for restrictions.

The disclosure requirements under AFIDA have not put a stop to agricultural acquisitions by foreign interests. In 1979, about 5.2 million acres of agricultural land were owned by foreign interests. The total at the end of 1988 was 12.5 million acres.

That total, however, is equal to only about 1% of the nation's agricultural land.

Contrast that with recent projections that aliens now own:

10% of the manufacturing base of the nation.
20% of all banking assets.
25% of the commercial and industrial loan volume.
25% of the energy industry.
33% of the real estate in Washington, D.C., 40% in Houston and 45% in Los Angeles.

When U.S. Representative John Bryant of Texas offered an amendment to the Omnibus Trade And Competitiveness Act of 1988 requiring disclosure of foreign investment, the Reagan White House opposed it and was able to get it deleted on the grounds that is would discourage foreign investment.

We are not presuming to suggest at what point foreign ownership and control becomes undesirable — or intolerable. Before state legislatures can make such a judgment, they need to have unquestioned data on the extent of foreign ownership or control.

In our opinion, the experience with the AFIDA statute offers practical guidance of the development of a disclosure system for other sectors.

It is worth examining these details:

The AFIDA law defines the term "foreign person" to include any business or legal entity, or individual, in which foreign individuals or governments directly or indirectly hold substantial control or a significant interest.

Such a foreign person who owns or acquires U.S. agricultural land must disclose the state and county in which the land is situated, along with the legal description of the tract.

The disclosure must indicate the legal name and address of the foreign person, the citizenship of the foreign person, and the nature of the foreign person's principal business.

The foreign person's type of interest in the land must be disclosed, along with the purchase price of the land and the purpose for which the land will be used. Any changes in ownership and use also are required to be reported.

If the foreign person does not make disclosure, or if he makes a false report, he may be subject to a civil penalty equal to as much as 25% of the market value of the property.

The AFIDA statute directs the Secretary of Agriculture to make annual reports to the Congress and also to furnish to each State Department of Agriculture or other appropriate agency in each state full data on farm land holdings in that state, by county, which are disclosed to him under the law.

Significantly, the AFIDA disclosures are open to public inspection. National Farmers Union staff in 1979 and 1980 examined the first 3,500 disclosure reports filed with USDA.

In Farmers Union's view, AFIDA needs to be tightened up. USDA should be directed and funded to carry on necessary investigations where there is a suspicion that violations are occuring or where true, ultimate ownership is being concealed. Perhaps, where violations are wilful or disclosures are fraudulent, the penalty should be confiscation of the property by the U.S. government.

Nevertheless, AFIDA is certainly preferable, even with its shortcomings, to the situation in other sectors. It would be a good starting point for disclosure of ownership of real estate generally and other enterprises.

Canadian Embassy

501 Pennsylvania Avenue, N.W.
Washington, D.C. 20001
Telephone (202)682-1740

July 6, 1989

The Honourable Ernest F. Hollings
Room 125
Senate Rayburn Office Building
Washington, D.C. 20510 (224-6121)

Dear Senator Hollings,

I very much appreciated our June 7 meeting. At that time, I undertook to provide you with material on Canadian regulations pertaining to foreign investment as well as setting out our concerns about the "Foreign Ownership Disclosure Act of 1989".

The Canadian authorities have reviewed the provisions of S 289/HR 5 in the light of the Free Trade Agreement (FTA). Inasmuch as the bill would impose a new registration and disclosure requirement confined to foreign investors, it would clearly be discriminatory and would be inconsistent with Article 1602 of the FTA, which obligates the United States and Canada to grant national treatment to each other's investors.

The FTA, of course, specifically allows for the monitoring of each country's investors in the territory of the other. Indeed, foreign investors in the United States already comply with extensive reporting requirements under present U.S. statutes. The "Foreign Ownership Disclosure Act of 1989", however, does not meet the criteria of Article 1604 of the FTA. Specifically, S 289/HR 5 would not protect confidential information whose disclosure could prejudice the investor's competitive position. In failing, moreover, to provide that protection and in imposing severe penalties for non-compliance, the further reporting requirements of S 289/HR 5 cannot reasonably be described as "solely for informational and statistical purposes". The overall effect would be to place a significant and discriminatory burden on Canadian investors, which could deter them from investing in the United States.

The FTA represents a historic and hard-won achievement for both Canada and the United States. The commitments on investment are an important element of this agreement and are intended to liberalize bilateral investment relations. Canada and the United States are by far the leading hosts for each other's investment capital. The Canadian authorities therefore expect that any legislation enacted by the Congress will be fully in compliance with the provisions of the FTA.

I am attaching background information on Canada's reporting requirements under the Investment Canada Act.

Yours sincerely,

D.H. Burney
Ambassador

CANADIAN REPORTING REQUIREMENTS FOR FOREIGN INVESTMENT

The Investment Canada Act

The requirements under Schedule II of the Act (attached) are applicable to foreign investments that are subject to review-i.e., acquisitions above Canadian $5 million; a separate, shorter form, exists for investments in the cultural industries, which are also reviewable. Under the FTA, the $5 million threshold will be raised to $150 million for direct acquisitions, and eliminated entirely for indirect acquisitions by 1992. The lesser reporting requirements under Schedule I pertain to foreign investment that is subject to notification only--i.e., investments to establish new businesses in Canada or to acquire control of existing Canadian businesses whose value is below the review threshold.

The information provided by investors is closely held and is protected even under the Canadian Access to Information Act. Under Section 36 of the Investment Canada Act, all the information obtained for the purpose of administering or enforcing the Act is privileged, and anyone who releases information in contravention of Section 36 is guilty of a criminal offence in the same way as a person who knowingly provides false or misleading information under the Act. The information may be passed to officials of provincial governments for the purpose of the "net benefit" analysis of an acquisition in the province. The information, however, remains privileged, and only the party for whose benefit the privilege exists can waive the right to claim that privilege. The exceptions are few and narrowly circumscribed. The only company-specific information published by Investment Canada is the name and location of the investor and acquiree, and the type of business concerned. Investors' undertakings may also be publicly disclosed. The Act provides that Ministers and officials may not be compelled to disclose additional information through legal proceedings. There has been no unauthorized disclosure in the nearly four years since the passage of the Investment Canada Act.

The Corporations and Labour Unions Act

Foreign investors are also subject to the reporting requirements of the Corporations and Labour Unions Returns Act of 1962. These requirements, however, are non-discriminatory in that they apply to every corporation that carries on business in Canada, or is incorporated under a law of Canada or a province, and which had gross revenue in excess of Cdn $15 million or assets over Cdn $10 million at the end of the yearly reporting period. These corporate returns are divided into confidential and non-confidential categories. The non-confidential category includes information on the corporation, officers and directors, and ownership of the corporation's issued share capital. The confidential category includes balance sheets, statements of investment, income, retained earnings, and changes in financial position, as well as transfer of technology from abroad. Non-confidential information may be inspected on payment of a nominal fee. Confidential information remains in the custody of the Chief Statistician of Canada and is published in aggregate form only.

British Embassy
3100 Massachusetts Avenue NW Washington DC 20008
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Telephone (202) 462-1340

Your reference

Our reference

Date 10 July 1989

Ms Sally Susman
Professional Staff Member
Senate Committee on Commerce,
Science and Transportation
Room SH 428, Hart Senate Office Building
Washington DC 20510

Dear Sally,

You asked me a little while ago if I could let you have information on the mechanisms for the collection in the United Kingdom of data relating to inward foreign investment. I attach a note which I hope will be of use to the Members of your Committee. I attach also copies of the forms sent to companies in the UK.

I think these papers mostly speak for themselves, but I draw the conclusion that our data collection in Britain is carried out on a rather similar basis to that of the Bureau of Economic Analysis of the Commerce Department. Our forms are perhaps somewhat less detailed, partly because much is left to the professional judgement of the statisticians. There is a certain degree of estimating and rounding, but then the BEA definitions, while clear, are a bit arbitrary. With a 98/99 percent level of returns we are confident that we get a good overall picture which provides the information the government needs to have, while imposing the minimum possible burden on industry and avoiding discrimination between domestic and foreign concerns.

I have mentioned in previous conversations our particular concern about the damage that could be done to the commercial interests of UK-owned companies in the United States by disclosure of commercially-sensitive information collected for the purposes of government statisticians. In this connection, we would have no confidence in the "restrictions" on disclosure contained in Congressman Bryant's and Senator Harkin's Bills. May I commend to you instead the language from our own Act?

Yours ever,
Andrew

Andrew Heath
First Secretary (Commercial)

UNITED KINGDOM: REPORTING REQUIREMENTS FOR FOREIGN INVESTORS

1. The Department of Trade and Industry, acting under the Statistics of Trade Act 1947, collects information each year on inward and outward direct investment in and by British concerns. The opportunity is taken every three years, when the results of the triennial Census of Overseas Assets become available, to reconcile them with the annual surveys of outward investment (the census shows stocks at book value, the surveys show net flows).

2. There is no requirement on a "concern" (the term is not defined, and there is no distinction between private and public companies) to register an investment relationship, though one may emerge from the annual report companies are required to file with the Companies Record Office. Instead, the DTI requires concerns to return information about relationships they may have with overseas concerns, and itself decides on the basis of the returns where there are direct investment relationships.

3. The definition used by the DTI rests largely on the OECD benchmark which speaks of investment that adds to, deducts from or acquires a lasting interest in an enterprise operating in an economy other than the investor's. A further criterion is that the investor's purpose should be to have an effective voice in the management of the enterprise; this is used to distinguish direct from other, eg portfolio investments.

4. These judgements are made case-by-case by the DTI statisticians and clearly there is latitude for interpretation. But since the surveys achieve a high rate of return, about 98/99 percent of companies approached, and since the conclusions of these surveys are not politically controversial in Britain, the definitions and the statistics produced by them have not in practice given rise to difficulties.

5. Samples of the forms used are attached. There are two forms for inward investment (one for subsidiaries, one for branches) and one for outward investment. The questions are designed to enable a simple calculation of the increase or reduction in the net worth of an investment since the previous reporting period to show net flow. The statistics published are straightforward aggregates of the data collected; there is an estimated element for the very small number of concerns which fail to reply.

6. A recent example of the analysis done on the basis of the data is also attached. The Statistics of Trade Act expressly forbids the publication of information which could be identified with a specific concern:

> "... in compiling any report, summary or communication the competent authority shall so arrange it as to prevent any particulars published therein from being identified as being particulars relating to any individual person or undertaking ..."

If an item of data is unique to one or two companies, or if it is a significant part of the total, publication is suppressed. We are not aware that any company has ever refused to supply information on the grounds that it could lead to the disclosure of commercially significant information.

7. For the sake of completeness, we should mention certain other surveys in which all UK companies take part whether foreign-owned or not:

- Quarterly Sales Information (manufacturing)

  All UK-based manufacturing firms must register in the central register of companies; a sample of these are required to report their quarterly sales figures;

- Annual Census of Production Statistics

  A similar survey is done on an annual basis. In this case statistics are produced showing, amongst other tables, employment, wages, output and capital expenditure by nationality of enterprise; aggregated

- Stocks, Capital Expenditure and Investment Intentions Inquiry

  A voluntary sample survey is carried out on a quarterly basis.

British Embassy
7 July 1989

AUTOMOBILE IMPORTERS OF AMERICA, INC.
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July 25, 1989

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PRESIDENT
G. NIELD

The Honorable Ernest F. Hollings
Chairman
Committee on Commerce, Science
and Transportation
125 Senate Russell Office Bldg.
Washington, D.C. 20510

Dear Senator Hollings:

On July 11, 1989 your committee held a hearing on the important issue of foreign investment in the United States. A number of the member companies of the Automobile Importers of America, Inc., or their foreign parents, are involved in significant financial investments in this nation's economy. AIA has commissioned a study by Dr. Robert Lawrence, a fellow of the Brookings Institute, to assess the impacts of this investment.

In general, we believe that direct foreign investment makes significant contributions and provides unique benefits to the economy of the United States. Direct investment both creates new jobs and affords continued employment opportunity in the face of plant closure and consequent loss of jobs. In addition, it enhances the transfer of technology both in areas of product research and development and improved manufacturing and production processes. Finally, it stimulates economic growth and fosters vigorous competitions essential to a healthy economic environment.

We would appreciate it if you would make this letter a part of the record of the hearing. Moreover, once Dr. Lawrence's work is complete, we will be pleased to make copies of his study available to your committee and for the record. If you should have any questions at that time, we would be happy to meet with you to address them.

Sincerely,

George C. Nield
President

CHL;bat

cc: Commerce Committee Members

CALIFORNIA STATE
WORLD TRADE COMMISSION

AUG 14 AM 10:58

August 10, 1989

The Honorable Ernest Hollings
Chairman, Committee on Commerce, Science and Transportation
United States Senate
Washington, D.C. 20510

Dear Senator Hollings:

I am writing on behalf of the California State World Trade Commission to express our strong opposition to the Foreign Ownership Disclosure Act of 1989. This measure would require the registration and disclosure of foreign direct investment in the United States.

The World Trade Commission, a unit of the Governor's office, brings together 11 of California's leading private sector representatives to promote international commerce.

H.R. 5 -- and its companion bill S. 289 -- would not help us to determine the extent or impact of foreign investment in the United States. The U.S. Department of Commerce already collects detailed information and publishes the data in aggregate form. However, these measures would require the disclosure of information about individual enterprises.

Both H.R. 5 and S. 289 are discriminatory. By directing foreigners to reveal information that American investors could keep confidential, they would run contrary to America's long-standing policy of treating foreign and domestic companies alike.

It is true that many of our competitors restrict foreign investment. But we must not make the same mistake. The United States has invested more money abroad than any country on earth. Rather than enacting short-sighted and discriminatory legislation, we should spearhead Uruguay Round negotiations aimed at overturning foreign restrictions and ensuring fair treatment of American companies that wish to do business abroad.

California's stake in foreign investment is unsurpassed. Our companies maintain operations throughout the world. And according to recent Commerce Department statistics, the number of foreign affiliates located in our state has grown to more than 2,000, one quarter of the nation's total. Their gross book value exceeds $42 billion, and together they employ some 324,000 people.

By allowing resources to seek their most productive use, foreign direct investment creates jobs, improves productivity and stimulates international trade. I hope you will join me in opposing foreign investment disclosure legislation such as H.R. 5 and S. 289.

Sincerely,

Robert T. Monagan
Chairman